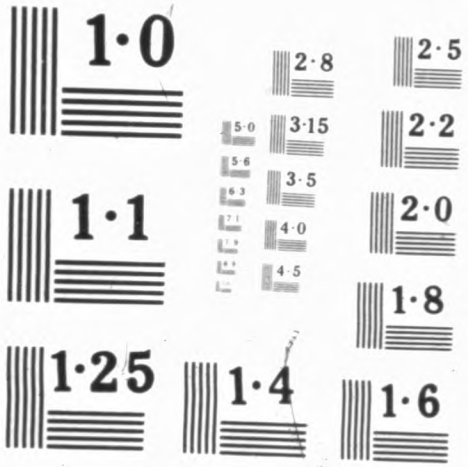

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GREAT BRITAIN
LAW OFFICERS' OPINIONS

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Dobbs Ferry, New York
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1976

GREAT BRITAIN

LAW OFFICERS' OPINIONS

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1835-91

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REPORTS

OF THE

LAW OFFICERS OF THE CROWN

RELATING TO THE

RIGHTS OF FISHERY, &c., ENJOYED BY FRANCE

ON THE

SHORES OF THE ISLAND OF NEWFOUNDLAND.

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Reports of the Law Officers of the Crown relating to the Rights of Fishery, &c., enjoyed by France on the Shores of the Island of Newfoundland: 1835–91.

No. 1.

The Law Officers of the Crown to Viscount Palmerston.—(*Received June* 2.)

My Lord, *Doctors' Commons, May* 30, 1835.

WE are honoured with your Lordship's commands signified in Mr. Backhouse's letter of the 19th July last, stating that he was directed to transmit to us the accompanying letter from the Board of Trade relative to the right of British subjects to the fishery on certain parts of the coast of Newfoundland where the right is now claimed by the subjects of France exclusively, and requesting that we would take into our consideration the subject of this letter, together with the Treaties to which it refers, and that we would report to your Lordship our opinion as to the claim which Great Britain may have to a share of the fishery in question, and as to the expediency of proposing to the French Government to commence negotiations for the purpose of effecting some amicable adjustment of the respective rights of British and French subjects upon the coast of Newfoundland.

In obedience to your Lordship's commands we have the honour to

Report—

That, having taken into consideration the above-mentioned letter from the Board of Trade, together with the Treaties to which it refers, we are of opinion that the subjects of France have the exclusive right of fishery on the part of the coast of Newfoundland specified in the Vth Article of the Definitive Treaty signed at Versailles on the 3rd September, 1783.

We have, &c.
(Signed) JOHN DODSON.
J. CAMPBELL.
R. M. ROLFE.

No. 2.

The Law Officers of the Crown to Viscount Palmerston.

My Lord, *Doctors' Commons, April* 17, 1837.

WE are honoured with your Lordship's commands signified in Mr. Backhouse's letter of the 1st instant, transmitting two notes received from Count Sebastiani, the French Ambassador at this Court, and a copy of your Lordship's answer to the first of those notes relative to certain collisions which Count Sebastiani states had occurred between British and French fishermen on the coast of Newfoundland, arising out of the interference of the former with the fishery on that part of the Newfoundland

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coast on which the French claim to have an exclusive right of fishing, and in consequence of which collisions Count Sebastiani calls on Her Majesty's Government for a formal disavowal of the claim of British subjects to a right of fishing concurrent with that of the subjects of France upon the coast in question; and requests that instructions may be given to the British authorities and naval officers on the Newfoundland Station, defining and enforcing the exclusive right of France under the Declaration annexed to the Treaty of the 3rd September, 1783.

Mr. Backhouse also incloses a copy of Prince Talleyrand's note of the 19th May, 1831, to which Count Sebastiani refers in his note of the 21st October last.

Also a copy of a letter from the Foreign Office to the Colonial Department, referring, for Lord Glenelg's consideration, a draft of the answer which your Lordship proposed to return to Count Sebastiani.

Secondly. The previous letters therein referred to, on the subject of Mr. George Handley's case, received from the Colonial Office and from the Admiralty.

Thirdly. A letter and its inclosures from the Colonial Office, on the subject of your Lordship's proposed answer to Count Sebastiani, and a second letter of the same date with reference to Mr. Handley's case.

Fourthly. The letter from the Board of Trade in 1834, and the Report of the Law Officers of the Crown in 1835 thereupon, which are referred to in the letter from the Colonial Office above mentioned; and

Fifthly. A Memorandum prepared in the Foreign Office upon the question of the right of the French to an exclusive fishery;

And requesting that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have attentively perused and considered the above-mentioned papers, and have the honour to

Report—

That, on referring to the opinion expressed in our Report of the 30th May, 1835, we think we went further than the circumstances of the case fairly warrant.

Attending to the Treaty of 1783, and the accompanying Declaration, the subsequent Treaties and the Act of Parliament, we think Great Britain has bound herself to permit the subjects of France to fish, during the season, in the allotted district, free from any interruption on the part of British subjects.

If there were really good room within the limits of the district in question for the fishermen of both nations to fish without interfering with each other, then we do not think that this country would be bound to prevent her subjects from fishing there. It appears, however, from the Report of Admiral Sir P. Halket that this is hardly practicable, and we are of opinion that, according to the true construction of the Treaty and Declaration, British subjects are precluded from fishing if they thereby cause any interruption to the French fishery.

We have, &c.
(Signed) J. DODSON.
J. CAMPBELL.
R. M. ROLFE.

No. 3.

The Queen's Advocate to the Earl of Clarendon.

My Lord, *Doctors' Commons, July* 4, 1853.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 1st instant, stating that he was directed to transmit to me a letter from the Admiralty, inclosing a despatch from Vice-Admiral Sir George Seymour, requesting instructions for his guidance in regard to French fishery rights on the coast of Newfoundland.

Mr. Addington also incloses the draft of a letter which your Lordship proposed to send to the Admiralty, conveying your opinion upon the matter, and requests that I should take these papers into consideration, and report to your Lordship whether, with reference to existing Treaties and Acts, I consider the letter to the Admiralty to be right and proper.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to

Report—

That if the French and English fishery jurisdiction and usage has always been in favour of the exclusive claim of France, and if, as stated by Sir G. Seymour, we have "on more than one occasion" negotiated for the purpose of obtaining the privilege from the French of fishing on a part of the west coast, I fear it may be now too late to contend that we have the concurrent right; but I am not informed as to these negotiations, and I observe that the Law Officers reported (17th April, 1837) in favour of the existence of a concurrent right, provided it could be practically exercised without interfering with the French fisheries, and I concur with the Law Officers in this opinion.

It does not, however, appear to me, even if we have in effect abandoned our concurrent right, and conceded to the French the exclusive right, that French ships of war are therefore entitled to interfere with British vessels, at least within British waters. I am not aware whether this is the first instance of such interference; if it be such, I would humbly submit that it ought not to be passed over in silence, or allowed to be treated as a precedent, or "concession" of the principle; for I concur with Sir G. Seymour in thinking that "the measures for carrying out the Treaty should emanate from our own Government," and that "the French should not take the law into their own hands."

Either the Admiral or the Colonial authorities of Newfoundland may possibly be able to point out what measures would be sufficient for this purpose.

If, however, it has hitherto always been the usage for French vessels of war to act as this vessel has acted, it will be too late to contend that they are not entitled so to do.

Subject to these remarks, the letter appears to me to be right and proper with reference to existing Treaties and Acts.

I have, &c.
(Signed) J. D. HARDING.

No. 4.

The Queen's Advocate to the Earl of Clarendon.

My Lord, *Doctors' Commons, May* 13, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed to transmit to me therewith two despatches from Sir Anthony Perrier, Her Majesty's Commissioner for the Newfoundland Fisheries question, offering observations upon statements respecting that question contained in certain despatches from the Governor of Newfoundland, and more especially with reference to the extent of the rights of fishery which France, under the Treaty and Declaration of 1783, is entitled to enjoy in the waters and on the shores of Newfoundland.

Mr. Hammond is pleased to request that I would take these papers into consideration, and report to your Lordship my opinion on the true construction of the Treaty and Declaration of 1783, in their bearing on the British and French rights of fishery and occupancy in the waters and on the shores of Newfoundland.

I am also honoured with Mr. Hammond's letter of the 12th instant, transmitting a further despatch from Sir Anthony Perrier upon the same subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to

Report—

That the principal point on which I conceive that your Lordship desires my opinion appears to be whether Sir Anthony Perrier's interpretation of the Treaty and Declaration of 1783 is, or is not, correct.

He apparently considers that the Treaty and Declaration ought to be construed so as not merely to secure to France the right of fishing within the limits free from all molestation or competition on the part of British fishermen, but that they ought to be so construed as to confer upon and secure to France an absolutely exclusive right of fishing within those limits; so that even if the French were never to fish therein

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themselves, they would be entitled at all times to exclude all British subjects from ever fishing therein, and so that in effect (at least for all objects and purposes connected with the fishery) the limits in question must be treated as if "ceded," and placed within French jurisdiction.

I understand Sir A. Perrier to have adopted this view, and to have done so chiefly upon the authority of certain documents which he suggests have hitherto escaped the notice of the various Ministers and Law Officers who have so repeatedly directed their attention to this claim.

With this view I cannot concur. Even if the expressions of the Treaty and Declaration were doubtful, which I do not consider them to be, I do not think that the documents alluded to by Sir A. Perrier (even supposing them to be in effect recently discovered for the first time) are sufficient to support his view of the French claim, or to induce Her Majesty's Government to depart from the ground which they have always hitherto maintained on this subject.

These documents appear to consist, in part, of Mr. Hyde Villiers' Report to Mr. Hay of the 20th October, 1830, of the negotiations which preceded the Treaty of 1783, of a despatch to Lord Grantham (then Foreign Secretary), of some remarks of Mr. Villiers, and of a speech of Mr. Pitt's.

Mr. Villiers' opinion appears not to agree with that of Sir A. Perrier. I confess I do not attach any great importance to these documents. If the cession of an exclusive right was discussed by the negotiators, and yet was not conceded by the Treaty or Declaration, I conceive that the fair inference which arises from this state of things is, either that it was never demanded, or that, if so, it was refused.

In my opinion the true construction of the Treaty and Declaration of 1783 is that the French thereby obtained—

1. A right to fish within the limits mentioned without any interruption or competition on the part of the British.

2. The removal and interdiction for the future of all fixed British fishery establishments from that part of the coast.

I am of opinion that this was all that was conceded to France, and that in everything else not necessarily comprised herein the rights of Her Majesty's subjects remain as intact within the limits in question as elsewhere.

I cannot, after anxious consideration, satisfy myself that the British, by fishing within the limits without having any fixed establishment on the shore, and when no French vessels are on the coast, for instance, would thereby interrupt, by their competition, "the fishery of the French" within the words or the spirit of the Declaration, even according to its most favourable construction for France. In my opinion, where there are no French fishermen, their fishery could not be "interrupted by English competition."

But any fishing at all, howsoever carried on, by Her Majesty's subjects within the limits, under whatever circumstances, is clearly incompatible with an exclusive right in France.

I have not been able, however, to discover from the papers what is of material consequence to the present inquiry, viz., the time when, and the shape in which France has either officially and directly asserted, or practically maintained or enforced her alleged exclusive right; as, for instance, by enacting any laws, or issuing any orders to her cruizers for the apprehension, trial, and punishment of British fishermen for fishing within the limits;* *ubi jus, ibi remedium*, is a sound legal maxim, and France has certainly not wanted the power or disposition to enforce her rights.

I remark, indeed, that Sir A. Perrier states (No. 22, p. 3) that the "French continue their encroachments and perpetrate unjustifiable acts of violence;" but such acts are clearly not to be considered to be done merely to maintain and enforce their asserted exclusive right, nor would the interruption or repulsion of British fishermen when French fishermen were fishing, or preparing to fish, near the place in question, amount, in my opinion, to any claim of exclusive right.

If France has long ago made and enforced this claim, and Great Britain has submitted to it, then I admit France may be considered as having acquired, howsoever, and as being actually in possession of, an exclusive right; but, if she has not done so, such omission would appear to me to be almost conclusive against the right.

I do not observe that these papers throw any light on this question of fact, which cannot, as such, be open to much doubt.

* The circumstances detailed in the letter of Mr. Galton (with the papers) appear to me to be strongly adverse to the vigorous assertion or maintenance, by France, of an exclusive right.—J. D. H.

On this subject I would beg leave particularly to refer to my Report of the 4th July, 1853; to that of the Law Officers of the 30th May, 1835, in which they state their opinion that the French had the exclusive right; and that of the 17th April, 1837, in which they state that such opinion "went further than the circumstances of the case fairly warrant."

I observe that Sir A. Perrier's notes (in red ink) are throughout highly adverse to the colonial claims, and to what he terms the colonial view of the subject. It is, however, to be borne in mind that it is the colonists who are chiefly, if not exclusively, interested in the question, and it is practically, I apprehend, the chief object of Her Majesty's Government to maintain those rights, so invaluable to the colonists, and so unimportant otherwise to Great Britain, and to take care that the French shall not, by importunity, pressure, or encroachment, succeed in obtaining any more than the Treaty has conceded to them.

In conclusion, I may state that I entirely concur with Lord Aberdeen's views of the rights of the French in this matter (as quoted by Sir A. Perrier in No. 22, p. 8), but that it might be desirable to have the opinion of the Law Officers of the Crown before the subject is finally considered as decided.

I may be, perhaps, permitted to suggest that some facts and dates as to the admitted exercise of French jurisdiction over British fishermen on the ground of "exclusive right," within the limits (when there could be no question of their interrupting, or competing with French fishermen, owing to their absence), and some information as to what the French Government has really claimed, and how it has supported its claims to an absolute exclusive right, would be of far greater utility to the Law Officers than quotations from Vattel, Mr. Pitt's speeches, the letters or Memoranda of statesmen in 1786, or than sharp and minute criticisms upon the opinions and conduct of the Colonial Government and authorities of Newfoundland, of which different materials Sir Anthony Perrier's Memoranda, however able and ingenious, are principally composed.

I have, &c.
(Signed) J. D. HARDING.

No. 5.

The Law Officers of the Crown to the Earl of Clarendon.

My Lord, *Doctors' Commons, July 26, 1856.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd June ultimo, stating that he was directed to transmit to us a letter from the Department of Her Majesty's Secretary of State for the Colonies, inclosing an extract from a despatch from the Governor of Newfoundland, reporting the result of the inquiries he had been instructed to make with regard to the fortifications of the Islands of St. Pierre and Miquelon, and also to inclose a Memorandum which has been drawn up in the Foreign Office on the question of the right of France, according to the terms of her Treaty engagements with this country, to erect these fortifications; and to request that we would take these papers into consideration, and report to your Lordship whether, under the circumstances, Her Majesty's Government have a right to require that the islands should not be fortified.

We are also honoured with Mr. Hammond's letter of the 18th July instant, transmitting to us a further letter from the Colonial Office upon the same subject.

In obedience to the commands of your Lordship we have taken these papers into consideration, and have the honour to

Report—

That we are of opinion that Her Majesty's Government has no right to require that the islands should not be fortified, absolutely and without qualification. We conceive that France must be considered to have received these islands (by Treaty of 1814) on the same footing as that on which she actually held them in 1792, that is to say, by virtue of the Treaty of 1783, and subject to the Declarations appended thereto. France is therefore bound, in effect, only to abstain from so fortifying the islands as that they shall not become an object of jealousy between the two nations, and she is not bound (as in 1763) not to fortify them at all. Whether the partial fortifications now erecting at St. Pierre are, in fact, of such a character and upon such a scale as can

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fairly be considered an object of jealousy between the two nations, is rather a military than a legal question.

We can only say that we are not satisfied by the particulars given that they are so evidently of this character as to justify a formal representation to the French Government.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
R. BETHELL.

No. 6.

The Law Officers of the Crown to the Earl of Clarendon.

My Lord, *Doctors' Commons, November* 8, 1856.

WE have been favoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th September last, in which he states, with reference to our Report of the 26th July last, on the subject of the fortifications erected by the French on the Islands of St. Pierre and Miquelon, he was directed by your Lordship to transmit to us a further letter from the Colonial Department, inclosing a Report from the Governor of Newfoundland of a visit which he had made to the Island of St. Pierre.

Mr. Hammond was also pleased to request that we would take this letter and its inclosure into our consideration, and report to your Lordship any further remarks we might have to make respecting the right of the French to erect the fortifications which are upon that island.

In obedience to your Lordship's commands we have perused the documents submitted to us, and have the honour to

Report—

That the information contained in the despatch of the Governor of Newfoundland of the 19th August last satisfies us that these fortifications do not amount to any infraction of the Treaties existing between this country and France, or present any just cause of complaint on the part of Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 7.

The Law Officers of the Crown to the Earl of Malmesbury.

My Lord, *Doctors' Commons, March* 24, 1859.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th March instant, stating that he was directed to refer us to the XIIIth Article of the Treaty of Paris of the 30th May, 1814 (which we should find in the first volume of Hertslet's "Treaties," p. 253), and to previous Articles in various Treaties between Great Britain and France, relative to the Newfoundland fisheries, which we should find between pp. 236 and 246 of the same volume.

That those Articles contain the existing engagements between the two countries on the subject.

That discussions have for many years been carried on between the two countries with the view of removing doubts and adjusting differences which in the course of time have grown up as to the intention and meaning of the several Treaties; and in the course of those discussions references have been made to the Law Officers of the Crown, more particularly, however, in regard to the question whether the right of fishery conceded to France was exclusive or merely concurrent? Copies of the Reports of the successive Law Officers were inclosed for reference, though Mr. Hammond was not directed to submit to us the specific point just referred to.

That about two years ago a Convention was signed by the Plenipotentiaries of the two countries, and ratified respectively by Her Majesty and the Emperor of the French, which it was hoped might put an end to the discussions, which had at times assumed a very irritating character; but this Convention has never come into operation, in consequence of the Legislature of Newfoundland (to whose assent, by an Article of the Convention, the arrangement was held subject) refusing to give legal sanction to its being carried into effect.

That nothing further has since been done in the way of negotiation between the two countries; but recent circumstances, with which it was thought unnecessary to trouble us, have rendered it necessary to make an attempt at all events to prevent conflicting interpretations of existing Treaties leading to local collision.

That the Legislature of Newfoundland having for the present evinced great repugnance to the negotiation of any new Convention, Her Majesty's Government came to the conclusion that the only course remaining was to endeavour to ascertain by local inquiry in what manner the existing Conventions were observed or disregarded by the French fishermen on the one hand, and by the English on the other; there being reason to suppose that if the latter were, as was alleged, in the habit of encroaching on French rights, the former were not backward in pushing their privileges beyond the limits which were warranted by Treaty.

That Her Majesty's Government were not without hope that if, as there was reason to suppose, the practice of both parties was more or less at variance with the strict requirements of the Treaty provisions, and that the restriction of both within their proper limit should appear to be equally inconvenient to both, a compromise might be made on the basis of the existing Treaties, by which all causes of discussion, either on the spot or between the two Governments, would be removed.

That Her Majesty's Ambassador at Paris was accordingly directed to make a proposal to that effect to the French Government, and the latter having concurred, it has been settled that a Mixed Commission shall be appointed to meet in the spring of the present year, and to examine and report upon the existing state of things as compared with what ought to be the state under a strict interpretation of Treaties.

Mr. Hammond was also pleased to state that the first point to be ascertained is, therefore, the bearing of the Treaties on the rights of the respective parties; and that is the specific point on which our opinion is more immediately requested.

That we should observe in the previous Reports of the Law Officers that the main point to which their attention was directed was the question of exclusive or concurrent fishery.

That it was thought unnecessary, however, that we should trouble ourselves with this point, as Her Majesty's Government are prepared, without further discussion, to acquiesce in the principle that the existing arrangements do particularly give an exclusive right of fishery in all cases where the concurrent fishing of British fishermen might impede the operations of the French.

That there are various other points on which Her Majesty's Government would wish to learn our opinion.

A copy of the abortive Convention of 1857, together with a Memorandum containing a comparison of the arrangements under that Convention with those previously existing, and with it a Report of a local inquiry made in the same year by Mr. Perley, were also inclosed.

Mr. Hammond further stated that in the Articles of the Convention we should find various concessions made on either side, and your Lordship would be glad if we would test those concessions by the Treaties, and give our opinion how far they go beyond or fall short of the rights conferred on or reserved to either of those instruments; that in the Memorandum by Mr. Perley we should find a Report of observations made in regard to the French occupancy, either real or constructive, during the season when, by Treaty, all French fishermen should have left the shores of Newfoundland; that we should find that, instead of mere wooden stages and huts, buildings of a more substantial character are erected, and measures taken for the preservation of those buildings during the absence of the fishermen; that we should find that not only are boats repaired, but built, and that those boats are left housed on shore during the winter season to be made use of by the French fishermen on their return in the spring; that we should find that small islands are wholly occupied by the French, and that wanton devastation of woods is alleged to be committed by them under the privilege accorded to them of obtaining wood for their fishing-stages and boats.

That we should find, on the other hand, that a fixed British population whose

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buildings and inclosures are in many cases situated in the immediate vicinity of the sea, has grown up in that part of the Island of Newfoundland on the coast of which the British Crown is pledged by the Declaration of 1783 to remove "fixed settlements." That it is desired that we would suggest rules for the guidance of the Commissioners in determining how far such buildings and inclosures may be within the pledge referred to. That we should find questions also raised, on which we are desired to express an opinion, as to the fisheries within rivers and salmon fisheries at the mouth of rivers, and the relative claims of French and British fishermen to the occupancy and enjoyment of such salmon fisheries and river fisheries.

That it is also desired that we should consider and define what islands may be considered as forming necessarily adjuncts to the coast of the Island of Newfoundland; whether, for instance, the Islands of Groais and Belleisle South (which was marked on the accompanying Chart) came within that definition; and, lastly, the precise rights of occupancy which the French are entitled to exercise in the Islands of St. Pierre and Miquelon.

Mr. Hammond was also pleased to add that Her Majesty's Government would be glad to receive our opinion upon these points at our earliest convenience, in order that the instructions to the British Commissioners may be drawn out without any unnecessary delay.

I am also honoured with Mr. Hammond's letter of the 16th March instant, transmitting further papers on this subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to

Report—

That the first question which requires to be distinctly answered is, "What is the actual position occupied by England and France respectively in relation to the Newfoundland fisheries, so far as regards the existing and operative Treaties and stipulations, by reference to which such position must be determined?"

This position appears to us to be, in effect, that which is defined by the XIIIth Article of the Definitive Treaty of Paris, 30th May, 1814: "Quant au droit de pêche des Français sur le Grand Banc de Terre-Neuve, sur les côtes de l'île de ce nom, et des îles adjacentes dans le Golfe de Saint-Laurent, tout sera remis sur le même pied qu'en 1792."

This Article is in effect "confirmed and maintained" (or, as it were, restipulated) by the XIth Article of the Treaty of Paris, 20th November, 1815, which we assume now to be in existence.

We can find no definition of what was "the footing on which the fishery stood in 1792," excepting only by reference to the Treaty of 1783, and to the British and French Declarations thereto appended, and to the previous Treaties of 1763 and of Utrecht (1713), the latter Treaty being especially referred to in the Treaty of 1783, Article V: "Les pêcheurs Français jouiront de la pêche qui leur est assignée par le présent Article, comme ils ont eu droit de jouir de celle qui leur est assignée par le Traité d'Utrecht."

It is to be observed that although the British and French Declarations (3rd September, 1783) were signed on the same day, yet that the French Declaration was, in fact, signed after, and not before, the British Declaration; it refers to and adopts the British Declaration as having been "delivered to-day," and the King of France declares "that he is fully satisfied" therewith.

If we are correct in assuming the substantial correctness of this history or deduction of the "title" of each of the Contracting Parties (which we could have wished to have been more distinctly stated and explained for our guidance), then we apprehend that, in order to test the legality of the existing state of things, or to ascertain how far the concessions made by the (abortive) Convention of 1857 depart from the Treaty stipulations, we must refer to, and be guided by, the Treaty of Utrecht, as modified by these Declarations annexed to the Treaty of 1783; inasmuch as the body of that Treaty, although altering the boundaries of the "French Shore," incorporates by reference and renews the Treaty of Utrecht as to the mode of exercise or enjoyment of the fishery; and the British Declaration (accepted by France as satisfactory) is express to this same effect.

Under these circumstances, we do not propose to attempt to point out specifically the various points in which the (abortive) Convention of 1857 exceeds or falls short of the Treaty rights of the parties. The Convention was altogether inconsistent with

those rights, and amounted to a new International Treaty on a different basis; exclusive rights were thereby substituted for concurrent rights. The Convention was not confined to Newfoundland (Article II); it authorized French fishermen to fish for bait (Article V); it extended their right of fishing to rivers (Article VII); and it appointed a Mixed Commission to frame Regulations (Article XVIII).

We propose, especially with reference to Mr. Perley's Memorandum (B), to point out how far the existing state of things differs from that stipulated for by the two Contracting Parties; and our observations can easily and at once be made applicable to the abortive Convention on many points, and any other specific questions upon which our opinion may be desired as to this (abortive) Convention can be distinctly submitted to us.

With reference, therefore, to the existing state of things as described in Mr. Perley's Memorandum (B), we beg to observe (Memorandum (B), pp. 5 and 7):—

1. The building of fishing-boats in Newfoundland (as contradistinguished from their repair) appears to us to be contrary to the Declaration of 1783, which uses the expression, "the French fishermen confining themselves to the repairs of their fishing-vessels."

It is obvious that such "building" may be indefinitely extended, and however useful to the French, it is not necessary to their enjoyment of the fishery; it was probably not practised *ab antiquo*, either from 1713 or 1792, and is clearly contrary to the Declaration of 1783.

2. As to fishing with bultows or with seines (pp. 5 and 6). These modes of fishing will only be within the Treaty stipulations in the event of their having been practised before 1792.

3. The erection of the manufactory at Quirpon in 1852 (p. 6) was wholly contrary to the Treaty and the Declaration, and any similar erection is and will be equally so.

4. The buildings on Cod Roy Island (p. 8) are clearly contrary to the Treaty and the Declaration.

5. The same observation applies to the French family resident there constantly during the last six years, or resorting thereto and wintering there, contrary to stipulation.

6. The same observation applies to the buildings on Red Island (p. 9), and to the grant thereof to a French Company.

7. The house and buildings at Port-au-Choix (p. 16) appears to us to be open to the same observation.

8. Any wanton devastation of woods would be clearly open to the same observation. They are only to cut the wood necessary for the repair of scaffolds, huts, and fishing-vessels.

Upon the British concurrent right to fish (which appears to us to lie at the root, as it were, of any new arrangements), inasmuch as our opinion is not desired, we have only to state that we concur with the opinion expressed by the Queen's Advocate in his Report of the 4th July, 1853, and by the Law Officers in their Report of the 17th April, 1837.

With reference to any rules for the guidance of the Commissioners in determining how far any buildings and inclosures may be within the pledge to remove "fixed settlements" contained in the Declaration of 1783, we can only say that we entirely concur with the view which has already been taken by the British authorities, and which was expressed by the Earl of Clarendon in his despatch to the Admiralty of 1853, approved of by the Queen's Advocate in his Report of the 4th July, 1853, viz., that only such "fixed settlements" as were, in effect and *bonâ fide*, fishery settlements are within the terms or meaning of that Declaration.

We do not observe from Memorandum (B) that any such British fixed fishery settlements are in existence on the French Shore.

We need scarcely observe that the erection of fixed dwelling-houses, shops, barns, warehouses, or inclosures, or any fixed settlements not used for fishing, is perfectly compatible with the Treaties and Declarations.

We do not discover in these papers that any just cause of complaint against the British fishermen or settlers exists; the only grievances seem to be those sustained by them.

With reference to all fisheries in rivers, and especially to salmon fisheries therein, we entirely concur with the view taken by the Earl of Clarendon in his last-mentioned despatch, that they are not within the scope of the Treaties and Declarations, and that the French have no right thereto, their fishery rights being limited to fishing in the

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sea for all kinds of fish. They have certainly no right to interrupt or molest any British subjects fishing for salmon in rivers (see Memorandum B, p. 24), or to fish either for salmon or any other fish whatever in any river in Newfoundland.

With respect to the islands which may be considered as necessary adjuncts to the coast of the Island of Newfoundland, and more especially to the Islands of Groais and Belleisle South (designated as "Bell Island" in the Chart herewith), we can only say that we are not aware of anything in the Treaties or Declarations expressly conferring upon the French fishermen the right of fishing, of drying fish, &c., on these islands; and the Treaty of Utrecht, Article XIII, would seem to imply the contrary. The words, "adjacent islands in the Gulf of St. Lawrence," appear to have been first introduced into the Treaty of 1814; and whatever may be their precise meaning or extent, they cannot extend to these islands, which are on the east, or Atlantic, coast of Newfoundland.

But we observe, nevertheless, that in Memorandum (A), p. 6, it is stated that "the exclusive possession of the French has extended to these islands with but little disturbance from our fishermen." We are not aware of any grounds upon which either this occupation, or the right of resorting to these islands, can be maintained to be in accordance with existing stipulations.

This appears to us to be only one of the numerous instances in which the French, by encroachment, and profiting by the "supineness" or tacit acquiescence of Great Britain, are steadily proceeding (1) to convert "easements" or "rights of user" into property; (2) to extend concurrent rights into exclusive rights; and (3) to interrupt and destroy British exclusive rights in a wanton manner.

With respect to the French right of occupancy of the Islands of St. Pierre and Miquelon, we have to observe that this is not a mere right of occupancy; these islands were expressly "ceded in full right" to France by the VIth Article of the Treaty of 1783 (as, indeed, they have previously been in 1763), and there can be therefore no question of her complete and exclusive title to these islands. As to their fortification (which is a distinct question not now arising) we can only refer to the Reports of the Law Officers of the 26th July and the 8th November, 1856.

With reference to any Convention or new arrangement with France upon this subject, we venture to point out that the encroachments and violations of stipulation appear to be entirely French; we find no trace of any serious British encroachment upon French rights. We would therefore suggest the importance—first, of vigorously asserting all British existing rights, and being prepared to maintain them for the future, in case of need, against their entire destruction or total interruption by France. We do not observe in the papers that this has ever been done on the coast of Newfoundland. (See Memorandum (A), pp. 3, 6, and (B), p. 24, for instances.) Secondly, of securing, at least to some extent, the previous consent of the Newfoundland Legislature to any fresh Convention or arrangement with France, without which Her Majesty's Government cannot properly conclude any negotiation with that Power, with a prospect of its ultimate practical success. It is, in effect, the most important rights and interests of the inhabitants of Newfoundland which are exposed to jeopardy by France, and which are at stake; they may not be able to enforce their existing rights, and they may not be best judges of what concessions might be made without injuring them in practice or adding to their wrongs; but they have an unquestionable right to be consulted before any concessions of their rights are formally made, and their existing rights can hardly be seriously diminished against their consent; and the probable result of first making concessions to France, and subsequently requiring their assent to such concessions, will only be (as in the case of the abortive Convention of 1857) to insure their refusal, and to furnish them with a serious colonial "grievance."

We have, &c.
(Signed) J. D. HARDING.
FITZROY KELLY.
H. M. CAIRNS.

No. 8.

The Law Officers of the Crown to the Earl of Malmesbury.

My Lord, *Doctors' Commons, April 20, 1859.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th April instant, stating that he was directed to transmit to us the accompanying letter and its inclosures from the Colonial Office, upon the subject of the approaching Commission appointed to inquire into the Newfoundland Fishery question; and to state to us that your Lordship is anxious to be favoured as soon as possible with our opinion upon the Resolutions passed by the Newfoundland Legislature, on their becoming acquainted with the nature of the Commission alluded to, and which in your Lordship's opinion appear likely to lead to considerable difficulties between Her Majesty's Government and that of the Emperor of the French.

In obedience to your Lordship's commands we have the honour to

Report—

That the Resolutions in question are not joint or identical Resolutions from both branches of the Colonial Legislature; the Resolutions of the Legislative Council are very different from and much more cautiously framed than those of the House of Assembly; and the Governor states that the present House of Assembly will cease to exist upon the 24th May. We rather infer that the Legislative Council and the Legislative Assembly are not entirely agreed, and that the former body is disposed to moderation.

We remark in the 18th Article of the Governor's despatch of the 4th March, 1859, an apparent misconception of the object of the proposed Commission. The object of the Commission is not (as the Governor appears to conceive) to "determine what existing Treaties do and do not confer;" but (as stated by the Secretary of State for the Colonial Department) "to inquire into the state of facts as regards the local operation of the Treaties . . . . .and more particularly to ascertain in what respect and to what extent the Treaty stipulations may have been disregarded on either side."

We remark that the Legislative Council (in its second Resolution) appears perfectly to understand the object of the Commission.

The Resolutions of the Legislative Council and the three first Resolutions of the House of Assembly require no comment.

With reference to the expressions "specifically as regards the exclusive right of fishery claimed by France" employed in the notification given by the French Naval Commander-in-chief (as quoted in Earl Cowley's note to Count Walewski, the 13th December, 1858) and to the 4th Resolution of the House of Assembly, we beg leave to refer and to adhere to the Report of the Law Officers of the 17th April, 1837, and of the Queen's Advocate of the 4th July, 1853, on this point, and to state that we are by no means satisfied that France has any exclusive right. Her Majesty's Government is, indeed, bound by the Declaration of Versailles, 1783, "to take the most positive measures to prevent her subjects from interrupting in any manner by their competition the fishery of the French during the temporary exercise of it which is granted to them upon the coasts of the Island of Newfoundland;" but France has no right to prevent British fishermen from fishing, as she might on the coast of France, when they offer no interruption to French fishermen.

The substance of the 5th Resolution is consistent with our Report of the 24th March, 1859.

The 6th Resolution is, in our opinion, erroneous. The French have a right to fish in the sea for all kinds of fish, as we have already stated in the above-mentioned Report.

With respect to the 7th Resolution, we can only refer to the above-mentioned Report of the 24th March, 1859, and to those of the Law Officers of the 28th July and 8th November, 1856.

The 8th Resolution is substantially in accordance with paragraph 2 of our above-mentioned Report.

The 9th Resolution is substantially in accordance with the 5th and 8th paragraphs of our above-mentioned Report.

We abstain from offering any observation upon the 11th and 12th Resolutions, which in fact reiterate a former Resolution of 1857, which if, as its language imports,

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it denies the power of the Imperial Legislature to deal with the territorial or maritime rights of the inhabitants of Newfoundland, is simply nugatory.

We have, &c.

(Signed) J. D. HARDING.
FITZROY KELLY.
H. McC. CAIRNS.

Annex.

Resolutions adopted in Committee of the whole House of Assembly of Newfoundland on the Despatches from the Right Honourable the Secretary of State on the Fishery Question.

House of Assembly, February 16, 1859.

WHEREAS, by a despatch dated Paris, 13th December, 1858, from Lord Cowley, Her Majesty's Ambassador at Paris, to Count Walewski, Minister of His Majesty the Emperor of the French, it is among other things stated that "it appears by the reports which have lately reached Her Majesty's Government that the Commander-in-chief of the French naval forces, employed in the protection of the French fisheries in that quarter, has formally notified that, from the commencement of the ensuing season, namely, the 5th May next, the French cruizers will rigorously enforce as against British subjects the rights secured to France by existing Treaties, and specifically as regards the exclusive right of fishery claimed by France;" and it is further stated, "Her Majesty's Government are free to admit that, although the Treaties do not in terms confer upon France any exclusive right of fishery and Her Majesty's Government must continue to deny any claim to that effect, yet that the operations of French fishermen may have been unduly interfered with by the competition of British fishermen, and perhaps by that of the inhabitants of Newfoundland. On the other hand, Her Majesty's Government have reason to believe that French subjects have encroached beyond the limits assigned to them by Treaty. The Imperial Government will readily admit that if the observance of Treaties is binding on one party, it is equally obligatory on the other, and they will not be surprised to hear that Her Majesty's Government in accepting, as they are bound to do, the notice given by the French Naval Commander, that the Treaty rights of France will be enforced, from the 5th May next, against British subjects, give on their part a counter Notice that from the same date French subjects will be required strictly to conform themselves to the terms of the Treaties between the two countries." His Excellency the British Ambassador further states in said despatch that he is "instructed to give this Notice to his Excellency the Minister of the Emperor, but that Her Majesty's Government are not without apprehension that the enforcement of these Notices on either side, without taking steps to ascertain by local inquiry, in what respect, and to what extent, the subjects of either Government may have encroached and disregarded the terms of Treaties, may lead to much unpleasant discussion, and may be productive of inconvenience and loss to the subjects of both parties, which by a timely understanding might be avoided." And further, "it appears to Her Majesty's Government that the interval which must elapse before the fishery on the coast of Newfoundland can be resumed, might with much advantage be employed in ascertaining to what extent the provisions of Treaties have been transgressed by either party; when this is ascertained there would probably be no difficulty on the part of the authorities of either country in restricting their respective subjects to a literal observance of the terms of those Treaties, and at all events no discussion could arise between the two Governments as to any measures which might be taken by their authorities for that purpose when once the points on which the Treaties have not been observed by their respective subjects are ascertained. And it might turn out that an impartial inquiry on the spot might suggest the means of a compromise on the matters in dispute, and that the interests of the subjects of both countries might thus be provided for, and all prospects of future collision thereby averted; and further, if the Government of the Emperor of the French concur in this suggestion, Her Majesty's Government will immediately name one or two Commissioners, as may be agreed on, for the express purpose of ascertaining, in conjunction with the like number of Commissioners appointed by the Imperial Government, in what respect and to what extent the subjects of the respective nations upon the coast of the Island of Newfoundland are in the habit of disregarding the provisions of the Treaties, by which, within certain limits, the fishery upon those coasts is secured to French subjects." And his Excellency Count Walewski, in a despatch dated Paris, 5th January, 1859, having assented to the proposition made by Lord Cowley.

And whereas the Right Honourable Sir E. B. Lytton, Her Majesty's Principal Secretary of State for the Colonies, in a despatch dated Downing Street, 14th January, 1859, to his Excellency the Governor, states, "That it has been decided by agreement between Her Majesty's Government and the Government of France that a Joint Commission equally composed from the two nations shall proceed to Newfoundland, as soon as the season opens, to inquire into the facts as regards the local operation of the Treaties conferring on French subjects rights of fishery on the coasts of that island, and more particularly to ascertain in what respects and to what extent the Treaty stipulations may have been disregarded on either side." And, further, "That Her Majesty's Government propose that there shall be two on each side, in order that the choice of one of the English two may be assigned to the Government of the Colony. The nomination of the Colonial Commissioner (if the French concur as to the number) will be placed at the disposal of the Local Government." The Secretary of State further states, "It appears from the Minute of the Executive Council, inclosed in your despatch No. 91, dated the 28th November, that the Council were at that time reluctant to entertain the suggestion of the appointment of a Commissioner without first obtaining the opinion of the local Legislature. I do not anticipate that the Council will object to co-operate with Her Majesty's Government in the manner

proposed by the nomination of the Commissioner, now that the measure is actually decided on, and considering the limited extent which it is proposed to assign to the functions of the Commission:" and in another despatch to his Excellency the Governor, dated Downing Street, 14th January, 1858, No. 3, Sir E. B. Lytton states, "In the 6th paragraph of my despatch of this date instructing you to nominate, with the advice of your Executive Council, some duly qualified person for appointment as Colonial member of the Mixed Commission which the Governments of this country and France have determined to send to Newfoundland, I have expressed my belief that the Executive Council will not object to co-operate with Her Majesty's Government in the selection as proposed. If, contrary to this expectation, the Council should decline to concur in any nomination, you will without delay name to me the person whom you would yourself recommend as most likely at once to execute the functions proposed, and to give satisfaction to the Colony in the post of Commissioner."

Resolved,—That the thanks of this House are due, and hereby given, to his Excellency the Governor for the unreserved manner in which he has communicated the important despatches from which the foregoing extracts have been made.

Resolved,—That it has been decided by agreement between Her Majesty's Government and the Government of France that a Joint Commission equally composed from the two nations shall proceed to Newfoundland to inquire into the facts as regards the local operation of the Treaties conferring on French subjects rights of fishery, to ascertain in what respects, and to what extent, the Treaty stipulations may have been disregarded on either side; and as it has been proposed by Her Majesty's Government that there shall be two Commissioners on each side in order that the choice of one of the English two may be assigned to the Government of the Colony, this House considers it expedient that a duly qualified person should be appointed to represent the Colony on the Commission aforesaid.

Resolved,—That this House desires that there should be no misconception as to the understanding with which the Colony agrees to take part in the proposed Commission, and that we regard it as one the functions of which will be limited strictly to an inquiry of facts in relation to infringement of Treaties by either British or French subjects, and that the Colony retains intact the right to deal independently with any proposal resulting from this inquiry that may contemplate a change in our maritime or territorial right.

And whereas this House desires to record its opinion of the respective Treaty rights of England and France in the fisheries of this Colony:—

Resolved,—That the Treaties do not confer on French subjects an exclusive right of fishing on any part of the coast of this island, and the House emphatically repudiates the claim they prefer in this respect.

Resolved,—That the French have no right under the terms of the Treaty to catch fish in the waters surrounding, or dry fish on, the Islands of Groais and Belleisle South.

Resolved,—That in the opinion of the House the rights of the French in the fisheries of Newfoundland are limited to cod-fish.

Resolved,—That in establishing fortifications at St. Pierre, and the character of the erections made there and on the French Shore, the express stipulations of the Treaty of Utrecht are entirely disregarded.

Resolved,—That the use of bultows and large seines by the French is at variance with the conditions prescribed by the Declaration of the King (1783), which declares that "the method of carrying on the fishery which has at all times been acknowledged, shall be the plan on which the fishery shall be carried on there."

Resolved,—That the right of the French to cut timber in this island is expressly confined to its use "for the repairs of their scaffolds, huts, and fishing-vessels," and that they are not permitted to winter in the island.

Resolved,—That whereas the House did on the 26th day of February, 1857, pass the following Resolutions:—

Resolved,—That the British coastal fisheries within the jurisdiction of the Colonial Government, although common and free to all British subjects, are yet in a peculiar manner the undoubted property of the people of Newfoundland; and while they are subject to the sovereignty of Her Gracious Majesty the Queen and her legal prerogatives, they cannot be alienated or shared with any foreign Power without the consent of the local Legislature. And whereas Mr. Secretary Labouchere confirmed the claim contained in the said Resolution, in his despatch to Governor Darling, dated 26th March, 1857, in which he stated that "the consent of the community of Newfoundland was regarded by Her Majesty's Government as the essential preliminary to any modification of their territorial or maritime rights."

Resolved,—That the people of the Colony would not assent to any proposal that could by implication, or otherwise, tend to compromise the rights hereby granted.

Resolved,—That the Committee rise and report the Resolutions, and that an Address be presented to his Excellency the Governor transmitting the same.

No. 9.

The Law Officers of the Crown to Lord J. Russell.—(Received May 22.)

My Lord, *Doctors' Commons, May* 22, 1860.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, in which, after stating a certain proposed Convention or Articles of Agreement between Great Britain and France, relating to the Newfoundland

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fisheries, Mr. Hammond was pleased to request that we would report to your Lordship our opinion thereon.

In obedience to your Lordship's commands, we have carefully considered the subject, and have the honour to

Report—

1. As to the Convention.

It is not within our province to express any opinion as to the policy or expediency of the proposed Agreement; and inasmuch as the language of the Convention has been adopted, after discussion, by the Commissioners of the British and French Governments, we abstain from suggesting any alteration in the mere wording of the proposed Convention. In two respects, however, we feel compelled to recommend alteration. We refer, in the first place, to the concluding part of Article IV of the Convention; and we think that the addition as to the promulgation of police Regulations, made in red ink* in the copy Convention laid before us, ought to be strongly insisted on.

The plain rules of justice require that Police Regulations, in order to their having a binding operation, should be previously made known to those whom they are to affect.

The proposed appeal from the Commissioners, in the event of their inability to come to a common conclusion, to the two Admirals (Article II, paragraph 4) we also deem highly objectionable, and we recommend that some more convenient and efficient appellate Tribunal should be agreed on and embodied in the Convention. Legal questions of more or less nicety will probably have to be decided on appeal from the Mixed Commission; and it cannot be supposed that Admirals in either service will be competent to the satisfactory determination of such questions. An additional objection is to be found in the great difficulty of obtaining the presence, at one and the same spot, and at times sufficiently frequent, and for periods sufficiently long, of two officers whose professional duties are so various, and embrace in their discharge such large spaces of territory. We would venture to suggest as a substitute for the two Admirals sitting in appeal, a single Judge of competent legal knowledge, selected and paid by the two Governments, having a fixed and convenient residence in Newfoundland, and being, neither by birth nor allegiance, connected with either of the two countries. But whether this particular plan be approved or not, we desire to express our strong conviction of the inconvenience and practical inefficiency of the appeal devised by the Convention in its present shape. Indeed, if it be not too late for the British Commissioner to retrace his steps in the matter, we would suggest the adoption of some such competent and independent Tribunal as we have described, in lieu of the naval officers of the two countries who, as the draft Convention stands, are to form the Mixed Commission for the adjudication of disputes in the first instance.

2. As to the Instructions.

We recommend that Article II be entirely omitted. Article I of the proposed Convention sufficiently guards against the Convention, or Instructions, infringing in any way existing Treaties: the IInd Article of the Instructions seems, therefore, to be wholly unnecessary, and it would tend to render practically useless the judicial authority of the Mixed Commission.

Before the Instructions to accompany the Convention can be further usefully considered, we think that a Code of Fishery Regulations ought to be drawn up and agreed on, and, if possible, annexed to the Convention, or, at all events, designated therein as the "Regulations to be agreed upon, published, and enforced by the Contracting Parties," or otherwise as may be convenient. These Regulations should contain provisions for the penalties or other punishment which it may be thought fitting to impose on persons guilty of infractions thereof.

The jurisdiction of the Mixed Commission over subjects of either country thus offending should also be matter of clear and careful definition and stipulation therein. Such jurisdiction should extend beyond the territorial limits of either Power, and it should be co-extensive territorially with the limits of the Newfoundland fisheries. Moreover, inasmuch as violations of such Fishery Regulations as are likely to be laid down may not unfrequently end in breaches of the ordinary criminal law of each country, provision should also be made for such cases, especially when occurring beyond the territorial limits of either of the two countries. On the part of Great Britain, a carefully considered Act of the Imperial Legislature will be necessary to

* Printed in *italics*.

give sanction and efficacy to these various jurisdictions and authorities. This renders it of less importance to consider the circumstances attending the Act of the Colonial Legislature, and we are given to understand that our opinion is not now desired with reference to the contents of such Act, or the expediency of allowing it to take effect.

We have, &c.

(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ARHERTON.

Annex 1.

Newfoundland Fisheries Convention.

THE Undersigned, namely, on the part of the United Kingdom of Great Britain and Ireland, Hugh Dunlop, Esq., a Commodore of the First Class, in the Royal Navy;

And on the part of the French Empire, M. le Capitaine de Vaisseau Louis Raymond, Marquis de Montaignac de Chauvance, Commandant-en-chef la Division Navale de Terre-Neuve;

Duly appointed and authorized by their respective Governments to act as Commissioners for the purpose of preparing practical Regulations for the prevention and settlement of questions and differences between the subjects of the two nations in conformity with the spirit of the recommendations which the Mixed Commission for Newfoundland Fisheries offered to their respective Governments, have agreed upon the following Articles which they submit to their respective Governments for approval and confirmation:—

ARTICLE I.

It is hereby provided, agreed, and declared that the following Articles shall not in any way be held or construed to be an interpretation of the existing Treaties, nor shall anything therein contained be now, or at any time hereafter, deemed or considered as a relinquishment, waiver, or surrender of any rights, or alleged, or reputed rights given, retained, possessed, or claimed by either party under or by virtue of the Treaties aforesaid; so that as long as these present Articles shall continue in force (with the special exceptions therein contained), and from and after their determination, the existing Treaties shall in all respects govern the practice of the fisheries on the coasts of Newfoundland by the subjects of the two nations as fully and effectually as if these present Articles had never been made.

ARTICLE II.

All disputes and differences between the subjects of the two nations on matters relating to the practice of the fisheries shall be arranged, settled, or adjudicated by a Mixed Commission composed of two officers of the British and French navies, specially appointed by the Naval Commanders-in-chief, on the part of their respective Governments, who will act in conformity with instructions based on the present Articles.

The Fishery Commission shall not take cognizance of any matter unless the same be previously reduced to writing, and presented either by the complainant, or by his agent, or by a Magistrate, or an officer of either of the two nations.

There shall be no appeal from, or remedy

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against, any joint decision of the Fishery Commission.

In the event of the Fishery Commissioners being unable to come to a joint decision on any point, the matter in question shall be referred to the respective Commanders-in-chief; and in the event of the Commanders-in-chief being unable to arrive at a satisfactory settlement of the question at issue, the case shall then be laid by them before their respective Governments.

ARTICLE III.

The British Government ~~shall be~~, bound to *is* secure to French subjects the full and free enjoyment of the fishery without any interruption or interference whatsoever on the part of British subjects within the limits assigned by the existing Treaties to the subjects of France for the purpose of carrying on the fishery on the coasts of Newfoundland.

ARTICLE (*a*).

The British Government undertakes not to object to the practices or usages at the present time actually adopted by French fishermen, ~~particularly~~ in all matters relating to—

1. The construction, organization, and maintenance of the French fishery establishments.

2. The practice of leaving on British territory during the winter, and under the care of British subjects, boats, salt, and fishing gear.

ARTICLE IV (*b*).

The French Government undertakes not to object to British subjects resident in St. George's and White Bays fishing in these bays, and *1* ~~will not interfere with~~ the buildings *2* there established by such British subjects, provided that they prosecute their fisheries in conformity with such Police Regulations as may be found necessary.

1 also not to object to
2 and erections

and promulgated from time to time by the Fishery Commissioners.

ARTICLE V.

The British Government ~~undertakes~~ to secure to French subjects the free use of such portions of the strand, within the French limits, as may be necessary for drying their fish, and for other purposes connected with their fishery.

is bound

ARTICLE VI.

(N.B.—This and the next Article to be transposed and incorporated into one.)

~~In conformity with the preceding Article~~, no building shall be erected by British subjects on such parts of the strand within the French limits as may be used for fishery purposes without the consent of the Fishery Commission.

and
in future

ARTICLE ~~VII~~ *VI.*

No building or erection that has or shall have been occupied for five successive seasons shall be removed until after payment by the Government requiring the removal of the same of such compensation as shall be jointly agreed upon by the Fishery Commissioners; and in case they cannot agree upon the amount of compensation, the case shall be referred to the respective Commanders-in-chief.

and no building, &c. (see above).

In addition to the provisions of Article IV (b),

object to the possession or occupation by British subjects

throughout the southern coast of Newfoundland,

from
to the end of the fishery season. Her Majesty shall be free to sanction as she may think fit any legislative or other measure for placing the local fishery and trade under a regulation during the remainder of each year.

ARTICLE ~~VIII~~ *VII.*

The French Government undertakes not to ~~disturb or interfere with British subjects residing~~ within the French limits ~~in their possession or occupation~~ of any buildings or erections now actually existing, provided that the site occupied by such buildings or erections does not come within the provisions of Article V.

ARTICLE ~~IX~~ *VIII.*

The British Government shall concede to the French the right of purchasing bait, both herring and capelin, on shore and at sea, free from all duty or other ~~restriction, with the single exception that fishing for herring with seines may be prohibited from the 20th October to~~ the 1st April in every year.

ARTICLE ~~X~~ *IX.*

The limit or boundary-line on all rivers and creeks up to which French subjects may prosecute their fisheries shall in all cases be determined by the Fishery Commission, in conformity with the joint instructions to be delivered to the Commissioners by the two Governments.

ARTICLE ~~XI~~ *X.*

From the date of these present Articles, and until the 1st November, 1867, the provisions herein contained shall be binding on the respective Governments of Great Britain and France.

If at the latter date notice as hereinafter is provided of a desire to determine these Articles shall not have been given by either Government, then these present Articles shall thenceforth continue in force for successive and complete periods of five years, until one of the Contracting Parties shall, twelve months previously to the expiration of any complete period of five years, give notice to the other of their desire to determine the same.

Paris, April 20, 1860.

ADDITIONAL ARTICLES.

(a.) The British Government reserves the right of occupying such portions of the strand referred to in these Articles as may be required for works or buildings of a military or other public character. Due notice will be given of any intended exercise of this right to the French Government.

(b.) The assent of the British Government to the present Articles shall remain subject to the approval of the Imperial Parliament and to the enactment of any laws which may be necessary to give them effect. The British Government engages to use its best endeavours to procure such approval and the passing of such laws.

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Annex 2.

Newfoundland Fisheries.

Convention of May 1860.

Joint Instructions for the Fishery Commissioners in conformity with the provisions of Article II.

1. ON or about the 1st June in every year the Fishery Commissioners of the two nations shall meet at such place as may have been mutually determined on by the Fishery Commissioners at the conclusion of the previous season, and they shall then decide upon the route to be taken by the Commission, it being understood that such route shall embrace the whole extent of coast within the French limits from Cape Ray to Cape St. John, the coast of Labrador in the Straits of Belle Isle, and the southern coast of Newfoundland.

2. The Fishery Commissioners shall not be authorized to decide points involving an interpretation of the existing Treaties or to define the rights of either nation under the Treaties.

All matters which shall be brought before the Fishery Commission shall be settled and adjudicated solely in accordance with the letter and spirit of the Convention.

3. The Fishery Commissioners shall in all cases of dispute between the subjects of the two nations endeavour, in the first instance, to bring about an amicable settlement of the question, in default of which they shall proceed to investigate the case before the Commission, and should the accused be proved guilty, the Commissioner of the nation to which the culprit* belongs shall inflict such summary punishment as the offence shall seem to deserve, provided the case comes within the jurisdiction of such Commissioner as officer or Magistrate; and should it not do so, the said Commissioner shall take the necessary steps to insure the offender being brought before the proper Tribunal.

*qy. *offender.*

This will require modification.

4. The Fishery Commission shall restrict its functions to questions connected with the fisheries, and shall in no case extend its jurisdiction to civil or criminal cases, unconnected with those fishery interests. All such cases shall be dealt with by the constituted authorities only.

5. A Secretary shall be appointed to assist each Fishery Commissioner, who shall also act as Clerk of the Court of the Mixed Fishery Commission, and whose duty shall be to keep a record of the proceedings of the Court.

6. The Clerks of the Court shall draw up in writing such complaints as the subjects of their respective nations may have to lay before the Commission, when it shall appear that the complainants are incompetent to do so for themselves.

7. All complaints presented to the Commission which shall be prosecuted to a hearing, and all other proceedings of the Commission shall be duly recorded in the Register of the Court kept for that purpose by the Clerks, as well as the Minutes of the proceedings at each sitting.

8. All matters referred to the Commanders-in-chief, and the decisions on the same, whether given by the Commanders-in-chief or by their respective Governments, shall be duly entered on the Records of the Court.

9. In all cases where a written complaint shall have been presented to the Commission, the Commissioners shall issue a summons requiring the immediate attendance of the party accused. All causes shall be prosecuted by verbal proceedings and *viva voce* evidence.

In case of the non-appearance of the parties, or one of them, the written Judgment or sentence of the Commissioners shall be delivered to the officer or agent charged with its execution.

It shall be notified to complainants that if a complaint or accusation be dismissed by the Commissioners as unfounded, malicious, or frivolous, the parties who shall bring or prosecute such charges before the Commission shall be liable to indemnify the accused for loss of time and other inconvenience caused by attendance before the Commission.

(N.B.—*This and next Article to be transposed and incorporated into one.*)

10. ▲1 Every building ▲2 which shall be commenced or erected on the strand without the previous consent of the Fishery Commissioners shall be removed within the period assigned by the Commissioners either by the person who shall have erected the same without the requisite sanction, or by the officers or agents specially appointed for this purpose.

▲1 *and*

▲2 *hereafter*

(*This to be modified to correspond with the terms of the Convention.*)

11. 10. The indemnities to be granted on the removal of buildings in accordance with the provisions of Article VII shall be paid to the parties entitled to the same on their receipt by the Fishery Commissioners, who shall make a Minute of such payment, and all such buildings shall thereupon be immediately removed by the order of the British Fishery Commissioners, or of officers appointed for that purpose. ▲

▲ *and every building, &c., &c.* (as above).

12. The Commissioners shall as soon as possible proceed to an inspection of the rivers and creeks situate within the French limits, and they shall immediately after such investigation draw up and forward to their respective Commanders-in-chief a Report containing their decisions and proposals relative to the limits up to which French subjects shall be entitled to carry on their fisheries.

The limits agreed upon or proposed are to be determined by some fixed marks capable of easy identification.

Plans may be annexed to the Report for the purposes of explanation.

13. Naval officers in command, Magistrates, and such agents as the Commissioners may agree to furnish with the necessary authority, may seize nets, boats, and fishing gear, made use of in contravention of the Fishery Regulations, provided due notice of such infringement of the Regulations has been previously given and disregarded, such seizure or detention shall only be provisional, and the matter shall as soon as possible be brought before the Fishery Commissioners.

14. The violation of the established Regulations after a previous warning given by an authorized agent, the repetition of the same offence, after a previous conviction, acts of violence, or the use of threatening language towards the said officers or agents, shall be visited with a penalty double in amount of that incurred by the simple violation of the Regulations. ▲

▲ *The practice of erecting "barrages" at the mouths of rivers within the French limits shall be regulated, or, if necessary, prohibited as the Commissioners shall agree in each case.*

15. The Fishery Commissioners shall be authorized upon mutual agreement to draw up such ▲ additional Regulations to be hereunto annexed as actual experience may appear to them to render necessary.

▲ *modifications of the present Regulations or*

The ▲ additional Regulations shall then be submitted for the approval of the two Governments through the respective Commanders-in-chief.

▲ *modifications or*

Paris, May 5, 1860.

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No. 10.

The Law Officers of the Crown to Lord J. Russell.—(*Received July* 30.)

My Lord, *Doctors' Commons, July* 26, 1860.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 4th July instant, stating that he was directed to transmit to us a letter from the Colonial Office, inclosing the Convention which has lately been concluded between this country and France for the settlement of the Newfoundland Fishery question, together with the drafts of (1) Instructions and (2) Regulations agreed upon between the British and French Commissioners in pursuance of the Convention in question; and to request that we would report to your Lordship any observations or suggestions which we may have to make upon the drafts of instructions and Regulations alluded to.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to

Report—

That the Convention* being signed, we are dispensed from offering any observations thereon.

With respect to the draft (1) Instructions, and draft International (2) Regulations herewith, we understand from Commodore Dunlop, R.N., who has been in personal communication with the Queen's Advocate, that it is not desirable to introduce any alterations into the draft (1) Instructions, excepting such as may be absolutely necessary; he further states that the French authorities actually possess sufficient means of exercising ample control over all French fishermen in Newfoundland; and that, as regards the British fishermen, owing to peculiar local circumstances, they will be easily amenable to the control of the Commissioners; that they are by no means prone to violence; and that no penalties or coercive measures beyond pecuniary fines and detention or forfeiture of boats, nets, and fishing gear, will be required as against them.

Under these circumstances, we have introduced such alterations only into the draft Instructions and Regulations as appeared to us to be absolutely necessary; and we have abstained from attempting to give to the language of these instruments anything like legal precision or accuracy. Relying on Commodore Dunlop's statement, we are of opinion that the instruments will suffice for the attainment of the object in view; all these documents, especially the Regulations, should, of course, be duly published and circulated in Newfoundland.

An Act of Parliament will be requisite to carry the Convention, Instructions, and Regulations into full effect; and it will be a question for consideration, after communication with the Governor, whether a Newfoundland Colonial Act will also be requisite for this purpose.

We have, &c.
(Signed) J. D. HARDING.
R. BETHELL.
WM. ATHERTON.

In the Instructions (1) no alterations or additions are necessary.

In the Regulations (2) insert after the word, "anywhere," in the third Regulation, the words, "or to interrupt or interfere with British fishery operations."

New Regulation (13), to be added, "The Fishery Commissioners shall have power to agree upon, make, and publish, from time to time, whensoever they may think fit, in writing, under their hands and seals, rules and orders for establishing and regulating the procedure and practice to be observed in all complaints, cases, or matters whatsoever brought before them, or heard or dealt with by them, and to revoke, change, and alter such rules and orders from time to time at their discretion.

J. D. H.
R. B.
W. A.

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* *Note.*—This Convention, though signed, was not ratified and never came into effect.

Annex 1.

NEWFOUNDLAND FISHERIES.

Convention of June 19, 1860.

THE Undersigned, namely, on the part of the United Kingdom of Great Britain and Ireland, Hugh Dunlop, Esq., a Commodore of the First Class in the Royal Navy;

And on the part of the French Empire, M. le Capitaine de Vaisseau Louis Raymond, Marquis de Montaignac de Chauvance, Officer of the Imperial Order of the Legion of Honour, Commander-in-chief of the French Naval Division of Newfoundland;

Duly appointed and authorized by their respective Governments to act as Commissioners for the purpose of preparing practical Regulations for the prevention and settlement of differences between the subjects of the two nations, in conformity with the recommendations which the Commission of Inquiry for Newfoundland Fisheries of 1859 offered to their respective Governments, and without departing from the spirit of the existing Treaties, which the present Convention is not intended to interpret or invalidate in any respect whatsoever, have agreed upon the following Articles, which they submit to their respective Governments for approval and confirmation:—

ARTICLE I.

All differences between the subjects of the two nations in matters relating to the practice of the fisheries shall be arranged or determined by a Mixed Commission composed of two officers, one of the British Navy, and one of the French Navy, specially appointed by the Naval Commanders-in-chief on the part of their respective Governments, who will act in conformity with joint instructions based on the provisions of the following Articles.

There shall be no appeal from any joint decision of the Fishery Commission.

In the event of the Commissioners being unable to come to a joint decision the matter shall be referred to the respective Commanders-in-chief, who, if unable to agree, shall refer the question to their respective Governments.

ARTICLE II.

The British Government will not oppose the practices or usages at the present time followed by French fishermen in all matters relating to—

1. The construction, the organization, and the maintenance of the French establishments.
2. The usage of leaving on British territory during the winter, and under the care of British subjects, boats, salt, and fishing gear.

ARTICLE III.

The French Government will not oppose British subjects resident in St. George's and White Bays fishing in these bays, and will not interfere with the buildings there established by such British subjects.

PÊCHERIES DE TERRE-NEUVE.

Convention du 19 *Juin*, 1860.

LES Soussignés, savoir, de la part du Royaume-Uni de la Grande-Bretagne et d'Irlande, Hugh Dunlop, Esq., Commodore de Première Classe de la Marine Royale;

Et, de la part de l'Empire Français, M. le Capitaine de Vaisseau Louis Raymond, Marquis de Montaignac de Chauvance, Officier de l'Ordre Impérial de la Légion d'Honneur, Commandant-en-chef la Division Navale de Terre-Neuve;

Dûment nommés et autorisés par leurs Gouvernements pour agir en qualité de Commissaires à l'effet de préparer un ensemble de dispositions pratiques, ayant pour but de prévenir et de concilier les contestations entre les sujets respectifs des deux nations, conformément aux propositions présentées aux deux Gouvernements, par la Commission d'Enquête sur les Pêcheries de Terre-Neuve en 1859, et sans sortir de l'esprit des Traités en vigueur, que le présent Acte n'a point pour but d'interpréter ni d'infirmer en quoi que ce soit, sont convenues des Articles suivants, qu'ils soumettent à leurs Gouvernements respectifs pour être approuvés et confirmés:—

ARTICLE I.

Les contestations entre les sujets des deux nations pour faits relatifs à l'exercice de la pêche seront conciliées ou réglées par une Commission Mixte composée de deux officiers, un de la Marine Britannique, et un de la Marine Française, spécialement désignés par les Commandants-en-chef des forces navales, au nom de leurs Gouvernements respectifs, et qui agiront conformément à des instructions communes, basées sur les dispositions des Articles suivants.

Les affaires réglées d'accord par les Commissaires des pêcheries sont sans appel.

Dans le cas où les Commissaires ne pourraient se mettre d'accord, la cause serait portée devant les Commandants-en-chef, lesquels, en cas de dissentiment, en référeront à leurs Gouvernements respectifs.

ARTICLE II.

Le Gouvernement Britannique ne s'opposera pas aux pratiques ou usages actuellement suivis par les pêcheurs Français en ce qui concerne—

1. La construction, l'organisation, et l'entretien des établissements Français.
2. L'usage de laisser sur le territoire Britannique durant l'hiver, et sous la garde de sujets Britanniques, des bateaux, du sel, et du matériel de pêche.

ARTICLE III.

Le Gouvernemeut Français ne s'opposera pas dans la Baie Saint-Georges et dans la Baie Blanche à l'exercice de la pêche par les sujets Britanniques habitant ces localités, et ne les inquiétera pas à l'occasion des constructions qu'ils y ont établies.

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ARTICLE IV.

In addition to the provisions of the preceding Article, the French Government undertakes not to disturb British subjects residing within the French limits in regard to buildings or inclosures now in their possession or occupation, provided the site occupied by such buildings or inclosures is not necessary for French fishery purposes.

ARTICLE V.

No buildings or inclosures that have or shall have been occupied for five successive seasons shall be removed until after payment to the owners by the Government requiring the removal of the same of such compensation as shall be jointly agreed upon by the Fishery Commissioners, and in case they cannot agree upon the amount of compensation, the case shall be referred to the respective Commanders-in-chief; provided always that no such compensation shall be required in respect of the removal of any building which shall hereafter be erected without the consent of the Fishery Commission.

ARTICLE VI.

The British Government reserves the right of occupying such portions of the strand referred to in the preceding Articles as may be required for works or establishments of a military or other public character.

Due notice shall be given to the French Government of any intended exercise of this right.

ARTICLE VII.

The British Government concedes to the French the right of purchasing bait, both herring and capelin, on shore or at sea, on the southern coast of Newfoundland, free from all duty or other restriction, from the 1st day of April in every year to the end of the fishery season.

ARTICLE VIII.

The limit or boundary-line in all rivers up to which French subjects may prosecute their fisheries shall be determined by the Fishery Commission.

ARTICLE IX.

The provisions of the present Convention shall be binding on the respective Governments of Great Britain and France from and after the 1st April, 1861, until the 1st November, 1867. If twelve months before the 1st November, 1867, notice of a desire to determine this Convention shall not have been given by either Government, it shall continue in force for successive and complete periods of five years, until one of the Contracting Parties shall, twelve months previously to the expiration of any such period, give notice to the other of its desire to determine the same.

ARTICLE IV.

En outre des dispositions de l'Article précédent, le Gouvernement Français n'inquiétera pas les sujets Britanniques résidant dans les limites Françaises à l'occasion des constructions ou enclos actuellement possédés ou habités par eux, pourvu que la place qu'ils occupent ne soit pas nécessaire aux besoins de la pêche Française.

ARTICLE V.

Les constructions ou enclos qui ont ou auront été occupés pendant cinq saisons consécutives ne pourront être déplacés avant le paiement préalable aux propriétaires par le Gouvernement qui réquerra l'enlèvement d'une indemnité, qui sera déterminée de concert par les Commissaires des Pêcheries, et au cas où ils ne s'accorderaient pas sur le montant de l'indemnité, l'affaire sera déférée aux Commandants-en-chef respectifs; mais aucune indemnité ne sera accordée pour l'enlèvement de toute construction qui serait établie à l'avenir, sans le consentement de la Commission des Pêcheries.

ARTICLE VI.

Le Gouvernement Britannique se réserve le droit d'occuper telles portions du rivage mentionnées aux précédents Articles qui seraient nécessaires pour l'érection d'ouvrages ou établissements militaires ou autres à l'usage du Gouvernement.

Un avis en forme de l'intention d'exercer ce droit sera donné au Gouvernement Français.

ARTICLE VII.

Le Gouvernement Britannique concède aux Français le droit d'acheter l'appât, hareng et capelan, à terre ou à la mer, sur la côte sud de Terre-Neuve, sans droits ou autres restrictions, depuis le 1er Avril de chaque année jusqu'à la fin de la saison de pêche.

ARTICLE VIII.

Les Commissaires des Pêcheries détermineront, pour chaque rivière, les points auxquels les sujets Français devront limiter l'exercice de leur pêche.

ARTICLE IX

Les dispositions qui font l'objet de la présente Convention seront obligatoires pour les Gouvernements respectifs de la Grande-Bretagne et de la France à dater du 1er Avril, 1861, jusqu'au 1er Novembre, 1867. Si un an avant la date du 1er Novembre, 1867, la présente Convention n'a pas été dénoncée par l'un des deux Gouvernements, elle continuera d'être obligatoire pour des périodes successives et complètes de cinq années, jusqu'à ce que l'une des Parties Contractantes ait annoncé à l'autre, un an avant la fin d'une période, son intention d'en faire cesser les effets.

In testimony whereof the respective Commissioners have signed the present Convention and have thereto affixed their seals.

Done in Paris, the 19th day of June, in the year of our Lord 1860.

(Signed) HUGH DUNLOP. (L.S.)
(Signed) Mis. DE MONTAIGNAC. (L.S.)

En foi de quoi les Commissaires respectifs ont signé la présente Convention et y ont apposé leurs cachets.

Fait à Paris, le 19e jour du mois de Juin de l'an de grâce 1860.

(Signé) Mis. DE MONTAIGNAC. (L.S.)
(Signé) HUGH DUNLOP. (L.S.)

Annex 2.

NEWFOUNDLAND FISHERIES.

Convention of June 19, 1860.

Joint Instructions for the Fishery Commissioners, prepared in conformity with the provisions of Article I of the Convention.

1. ON or about the 1st June in every year the Fishery Commissioners of the two nations shall meet at such place as may have been agreed upon at the conclusion of the previous season, and they shall then decide upon the route to be taken by the Commission. Such route shall embrace the whole extent of coast from Cape Ray to Cape St. John, the coast of Labrador in the Straits of Belle Isle, and the southern coast of Newfoundland.

2. The Fishery Commissioners shall take all such measures as may be necessary to secure the French fishery operations against any interruption or impediment whatsoever on the part of British subjects; and they shall also take all necessary measures for preventing French subjects from fishing anywhere beyond the French limits on the coasts of Newfoundland, or on any part of the coasts of Labrador or the Island of North Belle Isle.

3. All matters that shall be brought before the Fishery Commission shall be settled in accordance with the letter and spirit of the Convention of the 19th June.

4. Disputes between the subjects of the two nations shall, so far as possible, be settled amicably by the Commissioners, who, in default of such settlement, shall investigate the case, and should the party complained of be found guilty, the Commissioner of the nation to which he belongs either shall punish him to the extent of his powers, or shall take the necessary steps to insure his punishment by the proper tribunal.

5. The powers of the Fishery Commission extend only to questions affecting the interests of the fishery. All other matters shall be dealt with by the competent authorities.

6. Each Fishery Commissioner shall be assisted by a Secretary, who shall act as Clerk of the Court, and shall be bound to keep a register of the proceedings of the Commission.

7. Proceedings must be commenced before the Fishery Commission by a complaint in writing, proceeding either from the injured party or his agent, or from a Magistrate or officer of one of the two nations.

8. The Clerks of the Court shall reduce to

PÊCHERIES DE TERRE-NEUVE.

Convention du 19 Juin, 1860.

Instructions communes pour les Commissaires des Pêcheries, rédigées en conformité des dispositions de l'Article Ier de la Convention.

1. VERS le 1er Juin de chaque année, les Commissaires des Pêcheries des deux nations se réuniront au point dont il aura été convenu à la fin de la précédente saison, et ils arrêteront l'itinéraire à suivre par la Commission. Cet itinéraire embrassera toute l'étendue de côte du Cap de Raye au Cap Saint-Jean, la côte du Labrador dans le Détroit de Belle Isle, et la côte sud de Terre-Neuve.

2. Les Commissaires des Pêcheries prendront toutes les mesures nécessaires pour garantir les opérations de la pêche Française contre toute gêne ou obstacle quelconque de la part des sujets Britanniques; ils prendront également toutes les mesures nécessaires pour que les sujets Français ne se livrent point à la pêche en dehors des limites Françaises sur la côte de Terre-Neuve, ni sur aucun point des côtes du Labrador et de Belle Ile du Nord.

3. Les affaires déférées à la Commission seront réglées conformément à la lettre et à l'esprit de la Convention du 19 Juin.

4. Les contestations entre les sujets des deux nations seront, autant que possible, conciliées par les Commissaires, qui, dans le cas contraire, retiendront l'affaire; et si le prévenu est reconnu coupable, le Commissaire de la nation à laquelle il appartient le punira suivant l'étendue de ses pouvoirs, ou poursuivra sa punition devant la juridiction compétente.

5. La compétence de la Commission des Pêcheries embrasse seulement les questions ayant trait aux intérêts de la pêche. Toutes les autres affaires resteront du ressort des autorités compétentes.

6. Les Commissaires des Pêcheries seront assistés chacun d'un Secrétaire faisant fonctions de Greffier, qui sera chargé de tenir un registre des actes de la Commission.

7. La Commission des Pêcheries ne pourra être saisie que par une plainte écrite, émanant, soit de la partie lésée, ou de son mandataire, soit d'un Magistrat ou officier de l'une des deux nations.

8. Les Greffiers recevront par écrit les plaintes

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writing such complaints as the subjects of their respective nations may have to lay before the Commission, in case the complainants shall be found incompetent to do so for themselves.

9. In all cases where a written complaint shall have been presented to the Commission, the Commissioners shall issue a summons requiring the immediate attendance of the parties. All causes shall be heard orally, and evidence shall be given *viva voce*.

10. In case of the non-appearance of the parties, or of one of them, the written decision of the Commissioners shall be delivered to an officer charged with its execution.

11. Every person, except a Magistrate or an officer authorized by the Commission, who may prefer a written complaint shall enter into an undertaking that he will, in accordance with the decision of the Commissioners, indemnify the party complained of for loss of time and other damage resulting from the complaint in case it shall be found to have been made maliciously and without cause.

12. All causes which may be heard before the Commission, and all other acts of procedure, as well as the Minutes of their sittings, shall be entered in the registers kept by the Clerks.

13. All matters referred to the Commanders-in-chief, and the decisions taken thereupon, whether by them or by their respective Governments, shall be duly entered on the register of the Commission.

14. The compensation granted for the removal of buildings in accordance with the provisions of Article V of the Convention shall be paid to the parties entitled to the same by the Fishery Commissioners, who shall make a Minute of such payment, and such buildings shall, within six months of such payment, be removed by order of the British Commissioner or of officers appointed by him for that purpose.

15. Any building which shall hereafter be erected without the consent of the Fisheries Commission shall be removed by order of the British Commissioner without compensation, within six months after notice to that effect shall have been given by the Commission that the site occupied by such building is requisite for French fishery purposes.

16. The Commissioners shall, as soon as possible, proceed to an inspection of the rivers situate within the French limits, and they shall immediately afterwards address to the respective Commanders-in-chief a Report containing their decisions or their proposals relative to the limits within which French subjects shall confine their fishery.

The limits agreed upon or proposed are to bear reference to fixed marks capable of identification.

17. Naval officers in command, Magistrates, and other officers authorized by the Commission, may seize nets, boats, and fishing gear made use of in contravention of the established Regulations after due notice of such contravention has been given and disregarded.

Such seizure or detention shall be only provisional, and the matter shall, as soon as possible, be brought before the Fishery Commission.

Nor shall the officers or Magistrates of either nation seize property belonging to the subjects of the other, if any competent authority of such other nation be present or accessible.

que les sujets de leurs nations respectives auraient à porter devant la Commission dans le cas où ceux-ci seront reconnus incapables de les formuler eux-mêmes.

9. Dans tous les cas où une plainte écrite aura été présentée à la Commission, les Commissaires donneront une assignation ordonnant la comparution immédiate des parties. Toutes les causes seront entendues oralement, et les dépositions seront faites de vive voix.

10. En cas de défaut des deux parties ou de l'une d'elles, la décision par écrit des Commissaires sera remise à un officier délégué pour son exécution.

11. Tout individu autre qu'un Magistrat ou un officier autorisé par la Commission déposant une plainte écrite, devra prendre l'engagement d'indemniser la partie adverse de la perte de temps ou autres préjudices résultant des effets de sa plainte, dans le cas où elle serait reconnue avoir été faite par malice, et sans cause, le tout conformément à la décision des Commissaires.

12. Les causes entendues par la Commission, et tout autre acte de procédure, seront, ainsi que les procès-verbaux des séances, transcrits sur les registres tenus par les Greffiers.

13. Les affaires déférées aux Commandants-en-chef, et les décisions prises, soit par eux, soit par les Gouvernements respectifs, seront transcrites sur les registres de la Commission.

14. Les indemnités allouées pour le déplacement des constructions en conformité des dispositions de l'Article V de la Convention seront payées aux ayants droit, par les Commissaires des Pêcheries, qui dresseront procès-verbal du paiement, et les constructions susdites devront être enlevées, dans le délai de six mois du dit paiement, par l'ordre du Commissaire Britannique ou des officiers délégués par lui à cet effet.

15. Toute construction qui sera élevée à l'avenir sans le consentement de la Commission des Pêcheries, sera enlevée par l'ordre du Commissaire Britannique et sans indemnité, dans un délai de six mois de la notification qui en sera faite par la Commission que la place occupée par la dite construction est nécessaire pour les besoins de la pêche Française.

16. Les Commissaires procéderont le plus tôt possible à l'inspection des rivières situées dans les limites Françaises; ils adresseront aussitôt après aux Commandants-en-chef respectifs un Rapport contenant leurs décisions ou leurs propositions relatives aux points auxquels les sujets Français devront limiter l'exercice de leur pêche.

Les limites convenues ou proposées doivent se rapporter à un point de repère fixe et reconnaissable.

17. Les officiers de marine commandants, les Magistrats, et autres officiers autorisés par la Commission, pourront, après un avertissement préalable dont il n'aurait pas été tenu compte, saisir les filets, les bateaux, et le matériel de pêche dont il aura été fait usage en contravention aux Règles établies.

Cette saisie ne sera que provisoire et l'affaire devra être déférée à la Commission des Pêcheries aussitôt que possible.

18. Every year the Fishery Commissioners shall be authorized to present in concert to the two Governments, through the respective Commanders-in-chief, such modifications or additions to the present instructions as experience may appear to them to render necessary.

18. Chaque année les Commissaires des Pêcheries seront autorisés à présenter d'accord aux deux Gouvernements, par l'intermédiaire des Commandants-en-chef, telles modifications ou additions aux présentes instructions que l'expérience leur fera juger nécessaires.

Annex 3.

Draft of Regulations for the conduct of the Newfoundland Fisheries.

ARTICLE 1. It is forbidden to British subjects to interrupt or interfere with the French fishery operations within the French limits in any way whatsoever.

Art. 2. It is forbidden to French subjects to fish or to interrupt or interfere with British fishing operations beyond the French limits on the coasts of Newfoundland.

Art. 3. All breaches of the last two preceding Articles shall be punishable according to the importance of the case by the seizure of nets, boats, and fishing gear, or by a fine not exceeding 12*l.* (300 fr.). The above seizure shall not be final, except in the event of non-payment of the fine within a term to be fixed by the Commission.

Art. 4. It is forbidden to the subjects of both nations, with the exception of officers thereunto duly authorized, to interfere in or take on themselves the enforcement of the Fishery Regulations, or to seize nets, boats, or fishery gear of any description whatsoever, under penalty of a fine not exceeding 12*l.* (300 fr.).

Art. 5. All cases of assault committed by the subjects of either nation upon those of the other, whether at sea or on shore, or where they shall have intentionally caused damage or loss of property to each other, shall be liable to a fine not exceeding 12*l.* (300 fr.).

Art. 6. The Commissioners shall have power, when the circumstances of the case require it, to award over and above all penalties inflicted for offences against these Regulations the payment of damages to injured parties, and shall determine the amount of such damages.

Art. 7. The use of threatening or violent language, or menaces tending to a breach of the peace, shall be liable to a fine not exceeding 5*l.* (125 fr.).

Art. 8. Threatening language or menaces used towards officers or duly constituted authorities shall be liable in each case to a fine not exceeding 12*l.* (300 fr.).

Art. 9. Nets, boats, and other fishing gear shall be liable to be seized and detained until payment of the fines imposed, or until security shall have been given for the payment of the same.

Art. 10. In case of the repetition of the same offence by the same individual within the period of two consecutive seasons, the fine imposed for the offence by these Regulations may be doubled.

Art. 11. The Fishery Commissioners shall have power to agree upon, make, and publish from time to time, whensoever they may think fit, in writing, under their hands and seals, Rules and Orders for establishing and regulating the procedure and practice to be observed in all complaints, cases, or matters whatsoever brought before them, or heard or dealt with by them, and to revoke, change, and alter such Rules and Orders from time to time at their discretion.

No. 11.

The Law Officers of the Crown to Mr. Cardwell.

Sir, *Lincoln's Inn, April* 2, 1866.

WE are honoured with your commands signified in Sir Frederic Rogers' letter of the 15th February last, stating that he was instructed by you, Sir, to request us to take into our consideration the series of Acts of Parliament and Treaties with France named in the margin* relating to the Newfoundland fisheries, and that he was directed to request us to furnish you, Sir, with our joint opinion upon the following questions:—

1. Whether the Act of 1788 (28 Geo. III, cap. 35) is still in force or is to be considered as having been repealed by the subsequent breaking out of the war with France.

* *Acts of Parliament.*—28 Geo. III, cap. 35; 5 Geo. IV, cap. 51, s. 12; 2 & 3 Wm. IV, cap. 79.
Treaties.—Treaty of Peace of Utrecht, March 31, April 10, 1713 (Art. XIII); Treaty of Peace of Versailles, September 3, 1783 (Arts. IV, V, VI), and Declaration; Treaty of Peace of Amiens, March 27, 1802 (Art. XV); Treaty of Peace of Paris, May 30, 1814 (Arts. VIII, XIII, and XIV); ditto, November 20, 1815 (Art. XI).

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2. Whether the Act 5 Geo. IV, cap. 51, which, in section 12, contains similar provisions to those of the Act of 1788, has expired (which appeared to be the case).

3. Whether a statutory power now exists in the Crown, under the above or any other Act, to remove "fixed settlements," as required by the Declaration attached to the Treaty of Versailles in 1783 on the part of Newfoundland assigned to the French for their fishery by that Treaty, and, if so, what such power amounts to?

4. Is the term "établissements sédentaires" in the Declaration attached to the Treaty of Versailles to be confined to fishery establishments, or does it extend to all permanent habitations or establishments?

5. To what distance from the sea-shore may this obligation be considered to extend?

Sir Frederic Rogers was also pleased to state that, with a view to assist us in considering the subject, he was directed to annex a collection of Colonial Office papers, confidentially printed some years since for the use of the Colonial Office, and to refer us particularly to paragraphs 69, 80, and 81 of Mr. Strachey's Memorandum in that collection, and to request that we would return such collection when done with.

Sir Frederic Rogers also was pleased to inclose a copy of a despatch from the Governor of Newfoundland, containing an application for the appointment of a Magistrate on the French Shore, and to state that the case, as regarded fixed establishments, was largely discussed in Mr. Strachey's Minute No. 8, and more shortly in the following Paper No. 9.

In obedience to your commands, we have taken these papers into our consideration, and have the honour to

Report—

That we are of opinion that the questions submitted to us must be answered as follows:—

1. That the 28 Geo. III, cap. 35 (A.D. 1788) is not now in force.

The object of it was solely "to fulfil the purposes of the Definitive Treaty and Declaration" of Versailles.

That Treaty had been abrogated by the subsequent war of France and England, though, as will presently be seen, it was revived in 1814.

The 28 Geo. III, cap. 36, is not referred to as existing in the Act of 5 Geo IV, cap. 51 (1824).

That Act recites and repeals certain other Acts, and confers on the Crown the requisite orders for enforcing the provisions "of any Treaty or Treaties now in force," and re-enacts, for that purpose, the provisions of 28 Geo. III, cap. 35 though it does not mention that Statute.

2. That the Statute, 5 Geo. IV, cap. 51, was continued by 2 & 3 Wm. IV, cap. 79, till the year 1834, "and no longer." It does not appear to have been renewed by any subsequent Act; and, therefore, it is not now in force.

3. That the Crown has not now any statutory right to remove these "fixed settlements."

4. That the term "établissements sédentaires" does include all permanent habitations or settlements, and is not confined to mere fishing establishments.

5. The 13th Article of the Treaty of Paris, 30th May, 1814, provided that the right of the French to fish upon the Great Bank of Newfoundland and upon the coasts, and upon the adjacent island in the Gulf of St. Lawrence, should be replaced upon the footing of 1792, practically reviving the former Treaty of Versailles, which, to a certain extent, incorporated and recognized the Treaty of Utrecht.

The distance from the sea-shore to which the obligation of removing these establishments extends, depends upon the construction of these Treaties, and, on the whole, we think that, so far as the strict construction of the Treaty is concerned, the French contention is right, namely (p. 9), that the English might be called upon to remove all the "établissements sédentaires" on any part of *the beach*; what should be considered as "beach" must depend much upon local circumstances. The term ought certainly to receive such an interpretation as would remove all such establishments to such a distance from high-water mark as would be beyond the space generally used or occupied by fishermen on the coast, and as would leave ample room for fishing establishments between them and the sea.

It seem to us that there is great force in the observations of Governor Musgrave as to the change which has taken place in the mode of conducting the fishery by the English fishermen, who are now all residents in Newfoundland, and do not, as at the

time of the Treaty, come from England for this purpose; while the French fishermen still come from France, and, upon other grounds, there would probably be much practical difficulty now in the literal execution of the conditions of the Treaty, but we conceive that our duty is limited to answering the questions which have been put to us with reference to the Treaties and Statutes relating to this subject.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
R. J. PHILLIMORE.

No. 12.

The Law Officers of the Crown to Earl Granville.

My Lord, *Temple, November* 17, 1869.

WE are honoured with your Lordship's commands signified to us in Sir Frederic Rogers' letter of the 13th October last, stating—

1. That the Addresses of the Parliament of Canada, praying for the admission of the Colony of Newfoundland into the Dominion of Canada, upon which we reported on the 10th August, were referred to the Foreign Office for consideration, and he was directed by your Lordship to transmit to us a copy of those Addresses, and also the copy of a letter from that Department of the 17th ultimo, and of an inclosed Memorandum upon the proposed incorporation of Newfoundland with Canada, as bearing on the Treaties between this country and France and the United States.

2. That the different Treaties between this country and France, relating to this question of the Newfoundland fisheries, would be found in the first volume of Hertslet's "Treaties," pp. 236, 244, and 252, 253, but a short summary of the different clauses of those Treaties would be found in a confidential Minute prepared by Mr. Strachey, of the Colonial Office, pp. 15–19, which was therewith annexed for convenience of reference.

3. That the important questions referred to in that Memorandum upon the construction of those Treaties, and as to the rights of the French fishermen upon the coast and waters of Newfoundland still pending.

4. That as regards the United States, the Treaty of 1818, which was to be found in the second volume of Hertslet's "Treaties," p. 392, was revived, as was stated in the Foreign Office Memorandum upon the termination in 1865 of the Treaty of 1854.

5. That under those circumstances, Sir F. Rogers was to request that we would favour your Lordship with our opinion:—

(1.) Whether, in case Newfoundland becomes part of the Dominion of Canada, the Dominion will be liable to the Treaty obligations, whether towards France or the United States, which attach to the Colony of Newfoundland.

(2.) If such liability does not attach, what steps should be taken to insure the adoption of those obligations by the Dominion.

(3.) If such liability does attach, what form of acknowledgment, if any, should be required from the Canadian Government upon this subject before annexation takes place, and whether it is requisite that the terms of the Addresses should be altered to place such acknowledgment beyond question.

(4.) If such alteration ought to be made, your Lordship would be much obliged to us to suggest its terms.

In obedience to your Lordship's commands, we have taken the questions submitted to us into our consideration, and have the honour to

Report—

That, 1. We are of opinion that the Treaty obligations towards France and the United States are Imperial obligations, and not "debts or liabilities of Newfoundland" within the meaning of the first Resolution in the Addresses.

As at present framed, the Addresses make no provision for the discharge of any such obligations.

2 and 3. We think that the Addresses should be remoulded to add a provision

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rendering the Imperial obligation contracted with respect to the Colony of Newfoundland binding on and enforceable within the Dominion of Canada.

4. We venture to suggest as follows, or to the following effect:—

"All Treaty and other obligations existing at present between Her Most Gracious Majesty and any foreign Sovereign, Government, or Power, relating to, or in any way affecting Newfoundland, shall be legally binding on the Dominion of Canada for all intents and purposes, and as fully as if the said Treaty or other obligation had been enacted verbatim and made binding on Canada and on all persons therein by 'The British North America Act, 1867.'"

We have, &c.
(Signed) R. P. COLLIER.
J. D. COLERIDGE.
TRAVERS TWISS.

No. 13.

The Law Officers of the Crown to the Earl of Kimberley.

Temple, June 8, 1871.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Holland's letter of the 27th ultimo, stating that he was directed to transmit to us the inclosed copies of a correspondence with the Governor of Newfoundland, in reference to the prosecution of the seal fishery from the ports of that Colony by vessels of foreign nations.

That your Lordship requested that we would take these papers into our consideration, and furnish your Lordship with our opinion upon the following questions:—

1. Whether seals are "fish" and persons conducting seal fishery "fishermen" within the meaning of the Treaty of 1818?

2. Whether the proceedings of United States' fishermen in the ports and harbours of Newfoundland which are objected to by the Legislative Council and Chamber of Commerce of that Colony are an infringement of the Treaty of 1818, or of the Imperial Act 59 Geo. III, cap. 38.

In obedience to your Lordship's commands we have the honour to

Report—

That we are of opinion that seals are not fish and that persons capturing seals are not fishermen within the meaning of the Treaty of 1818. It follows that the provisions of that Treaty and of the Statute 59 Geo. III, cap. 38, have no application to such persons, conferring upon them no rights and affecting them with no liabilities. It also follows that the Colony is entitled to assert its territorial rights against them to the same extent as it would have been entitled if no such Treaty had been made.

We have, &c.
(Signed) R. P. COLLIER.
J. D. COLERIDGE.
TRAVERS TWISS.

No. 14.

The Law Officers of the Crown to Earl Granville.—(Received January 19.)

Temple, January 17, 1872.

My Lord,

WE are honoured with your Lordship's commands signified in Viscount Enfield's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office inclosing a copy of a despatch from the Governor of Newfoundland, together with a letter from the Commander of Her Majesty's ship "Danaë" containing a series of questions with reference to the French rights of fishing on the coasts of Newfoundland.

That the Secretary of State for the Colonies, as we would perceive, was desirous of ascertaining your Lordship's opinion as to the answers which Governor Hill proposed

to return to Captain Brown's questions, to some of which his Lordship suggested certain modifications.

That special reference was made in the Colonial Office letter to the Report of the Law Officers of the Crown of the 24th March, 1859 (which we found in the manuscript volume annexed), and to various other documents bearing upon the particular points in question contained in the four series of printed papers annexed.

And that he (Viscount Enfield) was to request that we would take the correspondence into our early consideration, and favour your Lordship with our opinion upon the several matters adverted to in the Colonial Office letter.

In obedience to your Lordship's commands we have taken the whole of the correspondence into consideration, and have the honour to

Report—

That your Lordship may, in our opinion, properly concur in the answers which Governor Hill proposes to return to the questions submitted to him by Captain Brown, of Her Majesty's ship "Danaë," subject to the modifications suggested by the Earl of Kimberley in the respective answers to the fourth, fifth, and sixth questions.

We have, &c.
(Signed) J. D. COLERIDGE.
G. JESSEL.
TRAVERS TWISS.

Annex 1.

Mr. Meade to Mr. Hammond.

Sir,

Downing Street, December 19, 1871.

I AM directed by the Earl of Kimberley to transmit to you a copy of a despatch from the Governor of Newfoundland, inclosing copy of a communication from Captain Brown, of Her Majesty's ship "Danae," containing a series of questions in reference to the French rights of fishery on the coasts of Newfoundland.

2. I am to request that you will move Earl Granville to inform his Lordship whether, in his opinion, the answers which Governor Hill proposes to return to these questions are correct, or whether his Lordship has any suggestions to make in regard to them.

3. Subject to the opinion of the Law Officers of the Crown, whom Earl Granville will probably think it right to consult upon the point raised, Lord Kimberley is disposed to think that the answers to the first three and seventh questions are correct. That, looking to the opinion given by the Law Officers in 1859, the answer to the fourth question might perhaps be that, according to the interpretation put upon the Treaties by the Imperial Government, the French have no right to fish for salmon in any river, though the contrary view is upheld by the French, and that the matter must therefore be considered to be one in dispute.

4. Lord Kimberley is further disposed to think that the answer to the fifth question requires some modification, and that the following might, perhaps, be substituted for it:—

"The French have the right to demand the removal of any fixed fishing establishment on the French beach, but with regard to other establishments the question is in dispute. What should be considered as beach must depend much upon local circumstances. The term ought to receive such an interpretation as would remove all such establishments to such a distance from high-water mark as would be beyond the space generally used or occupied by fishermen on the coast, and as would leave ample room for fishing establishments between them and the sea."

5. His Lordship thinks that the answer to the sixth question might be framed with advantage in more general terms, as follows:—

"The French have no right to decide what means or engines the British shall employ, but they may object to any means or engines which are an infringement of the Treaty.

"It would be unreasonable for the French to object to the British fishermen using off the French Shore any means or engines for fishing which the French themselves use off that shore, but it is questionable whether the use of bultows is legal, if they were not used before 1792."*

6. I am desired to inclose, for reference, the printed papers noted in the margin,† and I am to request that they may be returned to this Office with Earl Granville's answer to this letter. I am also to inclose a copy of a despatch addressed to the Governor of Newfoundland in November 1869, to which he refers as forming the basis of some of his proposed answers to Captain Brown. This despatch was founded on the Colonial Office letter to the Foreign Office of the 25th October in that year.

I am, &c.
(Signed) R. H. MEADE.

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* See page 61 of Colonial Office Confidential Printed Paper, Colonial Office, August 1862. See also Law Officers' Opinion given to Foreign Office, March 24, 1859.

† 1. Memorandum by Mr. Jenkinson, 1859; Confidential Printed Paper, Colonial Office, December 3, 1859. 2. Newfoundland Fisheries, Confidential Printed Paper, Colonial Office, January 13, 1860. 3. Newfoundland Fisheries, Confidential Printed Paper, Colonial Office, August 1862. 4. Newfoundland Fisheries, Confidential Printed Paper, Colonial Office, March 1869; Secretary of State to Governor, No. 33, November 8, 1869.

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Annex 2.

Governor Hill to the Earl of Kimberley.

My Lord, *Government House, Newfoundland, November* 8, 1871.

I HAVE the honour to forward to your Lordship a copy of a letter from Captain Brown, containing certain questions respecting the duties of naval officers employed in the protection of the fisheries in Newfoundland.

2. The views of your Lordship's predecessor with respect to many of the points raised by Captain Brown, are expressed in Earl Granville's despatch to me of the 8th November, 1869, in which I am informed a copy thereof has been communicated to the Board of Admiralty for the guidance of the naval officers on this station. I did not, therefore, deem it expedient to reply to Captain Brown's letter, beyond sending a formal acknowledgment, until the queries had first been submitted to your Lordship.

3. I herewith transmit a copy of these questions with my replies thereto, in most of which I have been guided by the despatch of Lord Granville before referred to.

I have, &c.
(Signed) STEPHEN J. HILL.

Annex 3.

Captain Brown to Governor Hill.

Your Excellency, *"Danaë," St. John's, Newfoundland, October* 14, 1871.

I HAVE the honour to forward, for your information, a copy of the Report on the fisheries of Newfoundland and Labrador for 1871.

Throughout the catch, both of cod and herring, has been above the average, and the consequence was that I found no distress, save from old age or inability to work, little sickness, and few quarrels—the people seeming contented, happy, and very orderly.

There are several questions connected with the French Shore, which, if authoritatively settled, would greatly simplify the duties of naval officers:—

1. Have the French an exclusive right to the fishery on this shore?
2. If the French have not an exclusive right, what right have British subjects?
3. Have the French any right to the salmon fishery?
4. If the French have any right to the salmon fishery, how far up the rivers do these rights extend?
5. Have the French any right to ask for the removal of British subjects settled on this shore, unless they require the ground occupied by them for purposes connected with the fisheries?
6. When British subjects fish off the French Shore, have the French any right to decide what means or engines they shall employ to take fish?
7. In the event of the French coming to fish on any part of the shore where for years past they have not fished, have they the right to call on British subjects, who for a length of time have resided or fished there, to give over fishing and remove from the shore?

It is evident that the French naval officers on this station are of opinion that the French have the exclusive right to the fishery, and although our intercourse during the past season has been carried on with the greatest cordiality and friendship, and no difficulties of any sort have arisen, still, when the officers of the two nations hold different views of a Treaty, and when the rights of all parties are not strictly defined, there is always risk of misunderstanding arising, more especially as the French have grounds of complaint in the destruction of their property, during the time they are absent in France, by herring and seal fishermen, and failing to obtain satisfaction for these acts of wanton destruction, they may, and probably will, prevent our vessels from fishing on their coast during the summer. (I believe this to be the origin of the Port-au-Port question.) I also desire to call your Excellency's attention to the fact that during the past season the "D'Estaing" has been employed in visiting every harbour on the French Shore, and it is reported that the French have announced their intention of reoccupying several stations which for years past they have relinquished, and where there now are a considerable number of British subjects settled and supporting themselves by the fishery. Couche, Griguets, and Pistolet Bays are particularly named. At Couche there are 180 British subjects, at Griguets 70, and in Pistolet Bay about 100. It would be well, in case of the French calling for the removal of these people, to be prepared with some course of action.

Altogether, the state of affairs in connection with the French Shore seems to me most unsatisfactory, and cannot fail to be a continually increasing trouble, and liable at any time, through the indiscretion or over zeal of an officer, to cause serious misunderstanding.

I have further to remark that the magisterial powers with which naval officers are invested are of little or no use on the French Shore, as these powers are based on the Law, whereas on the French Shore no law exists, and when a plaintiff comes off to make a complaint, the defendant generally takes care to be out of the way until the man-of-war sails. The greater number of quarrels seem to take place with reference to land. Generally in this form:—A buys land from B, and after some little time C claims it. B, in the meantime, has made off. It is impossible to find out whether A ever did buy the land, and, if he did, whether B had any right to sell it. I should think it would be worth while the

Colonial Government sending a Commissioner round to give proper titles to the ground they occupy on payment of a small sum.

The want of some system of poor relief is very urgent. At present the aged, sick, or incapable, are entirely dependent on casual charity, and as the people generally have little more than is necessary for their own support, the misery of those unable to work is very great. If the Colonial Government would grant a small sum to be dispensed by the officers commanding Her Majesty's ships, it would be very useful, as at present the officers and crew of the men-of-war have to assist these poor people at their own expense.

The absence of any medical or surgical assistance on this shore is a serious calamity. The medical officers of this ship were employed the whole time of our stay at any port in affording relief to the sick, and must have attended 400 or 500 cases; fortunately the climate is good and the people healthy.

With reference to the Labrador herring fishery, I would remark that the practice of "barring herring," though illegal, is universal; and I cannot see that it is productive of any damage to the fishery. It is evident that the Newfoundland Government have not the power, even if they had the will, to put a stop to this practice, and I think it is idle and injudicious to make laws which cannot possibly be enforced, and which are openly and continuously set at defiance. At present the only result of the law forbidding the "barring of herring" is to cause constant quarrels. Every fisherman "bars" when he gets the chance, and then quarrels with every one else when he finds them more fortunate than he is.

A case of Taylor *v.* Taylor and others will probably be brought before the Court at St. John's, relative to the destruction of a net and threatening of life, owing to a quarrel relative to a large catch of mackerel made by the plaintiff.

On the south coast of Newfoundland, I would suggest that a large light or fog-signal be placed on Powles Head, at the entrance of Trepassey; a light or beacon on Boar Island, Burgeo; and that some steps be taken to prevent the sea from carrying away the spit in Great St. Lawrence Harbour. The reasons of these suggestions will be found at full in the Report on those places.

I have erected a beacon 25 feet high (white, with a cask placed horizontally on top), on Greville Point, Chateau Bay, in order to facilitate the entry of vessels into Pitt's Harbour.

I have, &c.
(Signed) WILLIAM S. BROWN.

Annex 4.

Questions in reference to the French Right of Fishery on the Coasts of Newfoundland.

Q. HAVE the French an exclusive right to the fishery on the French Shore?—*A.* The French have not the exclusive right to the fishery on the French Shore. This point is, however, still in dispute.

2. *Q.* If the French have not the exclusive right, what rights have British subjects?—*A.* Although fishing within the French limits by British subjects is to be discouraged as much as possible, English fishermen may fish within these limits in consideration of at once relinquishing to the French any waters in which they may desire to fish.

3. *Q.* Have the French any right to the salmon fishery?—*A.* The French have the right to the salmon fishery within their own limits.

4. *Q.* If the French have any right to the salmon fishery, how far up the rivers do these rights extend?—*A.* The right of the French to the salmon fishery extends so far up the rivers as will be bounded by straight lines drawn perpendicular to the direction of such rivers at the point where the French right of fishing ceases. Whatever may be the rights of British fishermen in the rivers, they are not to interfere with the sea fisheries of the French.

5. *Q.* Have the French any right to ask for the removal of British subjects settled on this shore, unless they require the ground occupied by them for purposes connected with the fisheries?—*A.* British subjects are not supposed to settle on the French Shore, neither are the French supposed to erect permanent buildings there.

6. *Q.* When British subjects fish off the French Shore, have the French any right to decide what means or engines they shall employ to take fish?—*A.* No; provided the British fish according to the laws of this Colony outside French limits.

7. *Q.* In the event of the French coming to fish on any part of the shore where for years past they have not fished, have they any right to call on British subjects, who for a length of time have resided or fished there, to give over fishing and remove the shore?—*A.* Length of residence does not confer upon an English fisherman the right to interfere with privileges accorded to the French by Treaty. British subjects should therefore remove from French limits when the latter, for fishing purposes, require such removal.

(Signed) STEPHEN J. HILL, *Governor.*
Government House, Newfoundland, November 8, 1871.

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No. 15.

The Law Officers of the Crown and Dr. Deane to the Earl of Kimberley.

Temple, March 6, 1873.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Herbert's letter of the 22nd February, stating that he was directed by your Lordship to state that Her Majesty's Government had under consideration the question of appointing Magistrates to keep peace and order among the settlers on the west coast, commonly known as the French Shore of Newfoundland, and that our opinion is desired whether the establishment of such a Magistracy would contravene any existing Treaty between Great Britain and France.

2. That by the XIIIth Article of the Treaty of Utrecht (1713) the sovereignty of the Island of Newfoundland and its dependencies was assured to the Queen, but by that Treaty and the subsequent Treaty of Versailles (1783) certain rights of fishing on the coast of the island were assigned to French subjects, and by the Treaty of Paris (1814) the French right of fishery upon the coasts of Newfoundland was replaced upon the footing in which it stood in 1772.

3. That those Treaties and the British and French Declarations which were annexed to the Treaty of 1783 would be found in the first volume of Hertslet's "Treaties," pp. 237–245 and p. 253, and the result of them was shortly summed up by Lord Palmerston, in a note of the 10th July, 1838, to Count Sebastiani, as follows:—

"The right of fishing on the coast of Newfoundland was assigned to French subjects by the King of Great Britain by the Treaty of Peace of 1783, to be enjoyed by them as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

"That the right assigned to French subjects by the Treaty of Utrecht was 'to catch fish and to dry them on land' within the district described in the said Treaty, subject to the condition not 'to erect any buildings' upon the island 'besides stages made of boards and huts necessary and usual for drying fish,' and not to resort to the said island beyond the time necessary for fishing and drying of fish.

"That 'a Declaration annexed to the Treaty of 1783, by which the right assigned to French subjects was renewed, contains an engagement that in order that the fishermen of the two nations may not give a cause for daily quarrels, His Britannic Majesty would take the most positive measures for preventing his subjects from interrupting in any manner by their competition the fishing of the French during the temporary exercise of it, which was granted to them,' and that His Majesty would for this purpose cause the fixed settlements which should be found there to be removed."

That "a counter-Declaration stated that the King of France was satisfied with the arrangement concluded in the above terms."

That "the Treaty of Peace of 1814 declares that the French right of fishing at Newfoundland is replaced upon the footing upon which it stood in 1792."

4. That it appeared that from a period as far back as 1784 British subjects and others have settled down within the limits of the so-called French Shore, and Governor Musgrave reported in 1865 that the population had been growing rapidly of late years, and then amounted to nearly 3,000, and that it was believed that the number was still increasing.

5. That the question how to maintain law and order amongst these settlers had been from time to time under the consideration of the Imperial Government, and that

6. In 1838 Lord Glenelg refused to sanction the appointment of a Magistrate at St. George's Bay on the ground that, as that place was within the limits of the French fishery, the establishment of any "permanent settlement," whether of French or English subjects, was inconsistent with Treaty engagements.

7. That in 1843 Governor Harvey suggested that the senior officers of Her Majesty's ships should be made Justices of the Peace, with instructions to arrest and send offenders to trial in the Colonial Courts, and that

8. The matter was referred to the Queen's Advocate, Sir J. Dodson, who reported "that the British Government has of itself, and without entering into an arrangement with the Government of France on the subject, a perfect right of bringing within legal jurisdiction, or rather of carrying into execution, its inherent sovereign jurisdiction over the south and west coasts of Newfoundland. . . . . That it may for that purpose confer a Commission of the Peace upon a naval officer or upon any other

person whom it may think proper to select," and make arrangements "for arresting any subjects guilty of offending against the laws of the Colony, or of violating the Treaties respecting the fishery." That a copy of that opinion was annexed for our information.

9. That Lord Stanley therefore approved of the suggestion of Sir John Harvey, and since that time Her Majesty's officers have frequently received commissions as Justices of the Peace.

10. That in 1849 Lord Grey, after consulting with the Foreign Office, authorized the appointment of a Resident Magistrate at St. George's Bay, which is on the French Shore, and informed the Governor that Her Majesty's Government were of opinion "that the establishment of such a Magistracy would not contravene any existing Treaty between Great Britain and France relating to Newfoundland." That a copy of the Foreign Office letter was annexed for our information.

11. That Mr. Fobin was thereupon appointed Resident Magistrate, and continued to act until 1853, when the House of Assembly passed a Resolution that the office should be abolished, as the inhabitants of St. George's Bay contributed no duties to the revenue of the Colony.

12. That no protest by the French Government against the appointment of this Resident Magistrate could be found, and that

13. In 1865 Mr. Cardwell informed the Governor that he was ready to consider the proposal for the appointment of a judicious person to act as Magistrate, provided that it was clearly understood that his proceedings would be under the personal control of the Governor, and added, "that a matter which cannot but touch the execution of Treaties cannot be treated as one of mere local administration."

14. That in December 1866 Lord Carnarvon informed Governor Musgrave that, pending the settlement of French and British rights on the coast, he was unable to authorize the appointment of a British Magistrate on the so-called French Shore.

15. That the Council and Assembly of Newfoundland now pray that the restriction may be removed, and that a Magistrate may be appointed.

16. That before taking any steps in the matter Her Majesty's Government thought it right to intimate their intention to the French Government, and Lord Lyons stated that the French Foreign Minister represented himself as being unable to approve any such action; that a copy of the instructions to Lord Lyons and his reply were annexed for reference.

17. That it would appear that the argument of the French Government against such a measure was that it would be an encouragement to the creation of permanent establishments, whose existence they contend is inconsistent with the Treaty, and is the result of simple toleration on their part.

18. That the question of what is included in the term "établissements sédentaires" in the British Declaration of 1783 had been, as we are probably aware, much discussed, and Law Officers had differed in opinion upon the point, as was shown by the accompanying extracts from the Report of Sir J. Harding, Sir Fitzroy Kelly, and Sir H. Cairns of the 24th March, 1857, and of Sir R. Palmer, Sir R. Collier, and Sir R. Phillimore of the 2nd April, 1866.

19. That if the view taken by Sir J. Dodson is correct, the determination of the present question would appear to depend not so much upon the construction to be put upon the term "établissements sédentaires" as upon the broader question whether the sovereignty and land of Newfoundland being admittedly vested in the Crown, subject to certain rights of temporary user by the French of parts of the shore, Her Majesty has not the power, irrespective of Treaty, to appoint Magistrates with a view to maintain peace and order within her jurisdiction.

In conclusion, Mr. Herbert was pleased to say that he was to request that we would favour your Lordship with our opinion whether the appointment of a Magistrate with jurisdiction over the so-called French Shore would contravene any existing Treaty between Great Britain and France relating to Newfoundland.

In obedience to your Lordship's commands, we have the honour to

Report—

That, in our opinion, the appointment of Magistrates to keep peace and order in that part of the west coast of Newfoundland, which is known as the French coast, will not contravene any existing Treaty between Great Britain and France.

By the XIIIth Article of the Treaty of Utrecht the Island of Newfoundland belongs wholly to Britain.

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This possession and right of sovereignty is by the same Article limited by allowing to the subjects of France the right to catch fish and to dry them on land between certain defined points, and erect stages and huts necessary and usual for drying fish.

The same right, and no more, as to Newfoundland is confirmed by the Treaty of 1783.

By the Treaty of 1783 (renewed by the Treaty of Paris 1814) the King of Great Britain is maintained in his right to the Island of Newfoundland, as assured to him by the XIIIth Article of the Treaty of Utrecht.

The limits of the fishing assigned to French subjects were, however, altered by the Vth Article of the Treaty of 1783, but, within the new limits, the same rights, and no more or less, were assigned to French subjects as they enjoyed under the XIIIth Article of the Treaty of Utrecht.

Two Declarations accompanied this Treaty of 1783.

The English Declaration provided that "His Britannic Majesty would take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishing of the French, during the temporary exercise of it, which is granted to them upon the coasts of the Island of Newfoundland; and he will for that purpose cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repairs of their scaffolds, huts, and fishing-vessels.

"That the XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishing which has at all times been acknowledged shall be the plan upon which the fishing shall be carried on there; it shall not be deviated from by either party. The French fishermen building only their scaffolds, confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of His Britannic Majesty on their part not molesting in any manner the French fishermen during the fishing, nor injuring their scaffolds during their absence."

The French counter-Declaration declares the French Government was fully satisfied by the English Declaration.

We see nothing in these Treaties or in the Declarations which prevents, either in letter or in spirit, the right of the Crown to appoint Magistrates to keep order within a part of its dominions, of which a limited use both in time and purpose is granted to French subjects.

On the contrary, we are of opinion that the Crown has under the Treaties and Declarations in respect to France, besides the cession of dominion, an implied, and necessary implied, right to appoint Magistrates within the limits in question to keep peace and order.

1. To restrain British subjects from "incommoding" the French fishermen whilst on the coast, and protecting their buildings during their absence, and punishing the offenders.

2. To see that the French fishermen keep within the terms of the privileges allowed them.

3. To keep order between the subjects of each, and between the subjects of the two countries.

4. Because if no Magistrate be appointed the coast within the limits will, during the absence of the French fishermen and when France can have no right, be left without Magisterial jurisdiction.

We are not able to see the force of M. de Rémusat's objections to the appointment of Magistrates founded upon the danger to French rights through the forming of permanent establishments by the English.

There is not, in our opinion, any connection between the appointment of Magistrates, which is not against Treaty rights and the forming of a permanent establishment, which may be provided against by the Treaty.

We have, &c.
(Signed) J. D. COLERIDGE.
G. JESSEL.
J. PARKER DEANE.

No. 16.

The Law Officers of the Crown and Dr. Deane to Earl Granville.—(Received April 25.)

My Lord, *Temple, April 25, 1873.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that on the 12th ultimo Her Majesty's Secretary of State for the Colonial Office communicated to your Lordship a copy of the Report with which we had furnished that Department, dated the 6th March, on the question now under discussion between the British and French Governments of appointing Magistrates on the "French Shore" of Newfoundland.

That he was to transmit to us the draft of a despatch which was thereupon addressed to Her Majesty's Ambassador at Paris, directing his Excellency to make a representation to the French Government founded upon our Report, and a despatch from him inclosing a draft of the communication which he proposed to address to that Government in consequence, but which he had first submitted for approval, with marginal notes which occurred to his Excellency after the note was framed.

And that he (Mr. Hammond) also inclosed a further letter from the Colonial Office containing some observations and suggestions in regard to the ultimate form in which this representation should be framed; and that he was to request us to favour your Lordship with our opinion as to the precise terms which it would be desirable to adopt in that communication.

In obedience to your Lordship's commands we have the honour to

Report—

That we have carefully considered the observations of Lord Lyons and the Colonial Office upon our former Report, and upon the form of the representation to be made to the French Government upon the subject of appointing Magistrates upon the so-called French coast of Newfoundland.

In reference to the suggestion in the letter from the Colonial Office, that the words "to protect the buildings of the fishermen during their absence" should be omitted, we submit to your Lordship's consideration that, as the engagements between the two countries allow these huts or buildings to be erected, they ought to be protected from plunder and wilful destruction during the absence of those who have put them up, and we would suggest the retaining of those words, which do not imply more than protection from wilful damage.

The observations in the letter from the Colonial Office upon the notes of Lord Lyons make it needless for us to trouble your Lordship with any remarks, and we are of opinion that the representation may properly be framed in its present form.

We have, &c.
(Signed) J. D. COLERIDGE.
G. JESSEL.
J. PARKER DEANE.

Annex 1.

Lord Lyons to Earl Granville.—(Received March 29.)

My Lord, *Paris, March 27, 1873.*

ON receiving this morning your Lordship's despatch of the day before yesterday respecting the Newfoundland fisheries, I prepared, for presentation to the French Government, a note founded upon the instructions it contained, and upon the Report from the Law Officers of the Crown to the Colonial Office, which was inclosed in it.

On consideration, however, I think it better, before sending the note, to submit my draft for your Lordship's consideration. Accordingly I do myself the honour to inclose it herewith.

My principal object in laying it before your Lordship, is to make sure that it neither overstates nor understates the sentiments of Her Majesty's Government with regard to the right to appoint Magistrates in the so-called French Shore, and to the exercise of that right with or without the consent of the French Government. I have, moreover, ventured to insert in the margin of the draft some observations which have occurred to me in reading it over.

I have, &c.
(Signed) LYONS.

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Annex 2.

Draft of proposed Note from Lord Lyons to M. de Rémusat.

M. le Ministre, *Paris, March* , 1873.

ON the 24th January last your Excellency did me the honour to address to me a note in answer to representations which I had made to you, by order of Her Majesty's Government, upon several subjects connected with the Newfoundland fisheries. These subjects were the renewal of negotiations for a general arrangement of outstanding questions; the proposed appointment of Magistrates in that part of Newfoundland, on the shore of which certain privileges are secured by Treaty to French fishermen; and, lastly, the seizure of the nets of British fishermen by the French cruizer "Diamant."

With regard to the second of these questions, I am directed by Her Majesty's Government to submit to your Excellency the following observations.

Her Majesty's Government continue to be of opinion, that while the appointment of Magistrates having jurisdiction over the shore in question, would not contravene any Treaty stipulation, it would conduce to the well-being of the French as well as the English in that part of Newfoundland.

Her Majesty's Government consider that the Crown has, under the Treaties and Declarations in respect to France, an implied, and necessarily implied, right to appoint Magistrates within the limits in question, in order to keep peace and order within a part of its dominions, of which a use, limited both in time and purpose, is granted to French subjects. And such appointments appear to be imperatively required:—

1. To restrain British subjects from incommoding the French fishermen whilst they are on the coast, to protect the buildings of those fishermen during their absence, and to punish offenders in such cases.

2. To see that the French fishermen keep within the terms of the privileges allowed them.

3. To keep order between the subjects of each and between the subjects of the two countries.

These are the exact words of the Law Officers, but I am not sure that I understand them. Do they mean—"to keep the peace between Englishmen and Englishmen—between Frenchmen and Frenchmen—and between Englishmen and Frenchmen?"

4. Because, if no Magistrate be appointed, the coast within the limits will, during the absence of the French fishermen, and when France can have no right, be left without Magisterial jurisdiction.

Might it not be asserted that certain rights, such as the preservation of the huts, &c., from injury, remain at all times to France? We might perhaps say, "and when they have no right to resort to the coast."

I consider, under the Treaty, the employment of British subjects to preserve French fishing establishments during the winter is illegal, and that they must be left to the mercy of the elements, and if we insist on this, we should bring the French to reason; for it would ruin their fisheries if they were obliged, as under the Treaty, to remove their gear at the close of each season.

It appears, moreover, that the right to appoint Magistrates has been already exercised.

In 1843 it was determined that the Senior Officers of Her Majesty's ships on the coast should be made Justices of the Peace, with instructions to arrest and send offenders to trial in the Colonial Courts, and since that time Her Majesty's Officers have frequently received Commissions as Justices of the Peace.

In 1849 a Resident Magistrate was appointed at St. George's Bay, on the shore in question, who continued to act until 1853, when the Colonial Legislature abolished his office on the ground that the inhabitants of St. George's Bay contributed no dues to the revenue of the Colony.

It does not appear that any protest against the appointment of this Resident Magistrate was made by the French Government.

Her Majesty's Government are unable to appreciate the force of the objection that the appointment of Magistrates would endanger French rights by encouraging the formation of permanent establishments by the English. On the contrary, Her Majesty's Government conceive that the advantages to the peace and harmony of the mixed population frequenting the French Shore, which could hardly fail to result from the establishment of a recognized Magisterial authority among them, are obvious and little open to objection; and they can hardly doubt that, upon a reconsideration of the facts, the French Government will concur with them in thinking that the proposed measure is calculated to lessen the chances of collision or misunderstanding between the fishermen of the two nations, which, in the present state of certain matters connected with the Fishery question, it is of so much importance to avoid.

In asking your Excellency's attention to the foregoing considerations, I am directed by Her Majesty's Government to renew the assurance that they will gladly enter into a friendly discussion with the French Government on the whole subject of the Newfoundland fisheries.

I have, &c.

But is it not one of the principal complaints of the Colonial Government that the absence of Magisterial authority (among other causes) prevents the opening up of the country and the development of its resources, by impeding the settlement of the English in it? And in urging the appointment of Magistrates, is it not one of the principal objects of the colonists to facilitate the permanent establishment of the English on the French Shore or in its neighbourhood?

If so, the objection of the French Government seems reasonable enough in the French point of view, though it cannot cancel whatever right we have to appoint Magistrates without the consent of the French, or in spite of a protest from them.

The right of the English to form permanent establishments appears, from the Law Officers' Report, to be not incontrovertable.

Annex 3.

Mr. Holland to Mr. Hammond.—(*Received April* 12.)

Sir, *Downing Street, April* 10, 1873.

I AM directed by the Earl of Kimberley to acknowledge the receipt of your letter of the 2nd instant, inclosing a copy of a despatch from Her Majesty's Ambassador at Paris, with the draft of a note which it is proposed to address to the French Minister for Foreign Affairs relating to the question of the Newfoundland fisheries, and having special reference to the appointment of Magistrates on the so-called French Shore.

Lord Kimberley desires me to request that you will inform Earl Granville that, subject to the following remarks, he concurs in this draft.

His Lordship thinks that in order to avoid any appearance of admitting the right of French fishermen to keep up their buildings and have them protected during the winter, the words which occur at paragraph 4, p. 4, "to protect the buildings of those fishermen during their absence," should be omitted. The words are placed within brackets marked in red ink in the draft (herewith returned).

With regard to the marginal notes made by Lord Lyons, Lord Kimberley is of opinion that the words used by the Law Officers, "to keep order between the subjects of each and between the subjects of the two countries," are intended to mean "to keep the peace between British subjects, between French subjects, and between British and French subjects." French subjects when within the territorial jurisdiction of a Colony are liable to and bound to obey the laws of that Colony.

As regards Lord Lyons' second observation, Lord Kimberley questions the expediency of altering the words of the Law Officers.

Lord Lyons, in his concluding observations in the margin of the draft, appears to Lord Kimberley to have somewhat misapprehended the views of the Colonial Government in this matter. The question of preserving peace and order amongst the settlers, now very numerous and increasing, on the French Shore, is distinct from the natural wish of that Government to be in a position, by making use of parts of that shore, to avail themselves of the mineral and other resources of the adjoining territory.

I have, &c.
(Signed) H. T. HOLLAND.

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No. 17.

The Law Officers of the Crown and Dr. Deane to Earl Granville.—(*Received October* 20.)

Temple, October 20, 1873.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 10th instant, stating that, with reference to Mr. Hammond's letter of the 6th instant, he was directed by your Lordship to transmit to us the accompanying letters and inclosures, which your Lordship had received from the Colonial Office, together with your reply, respecting the proceedings of Mr. Bennett (the Premier of the Colony of Newfoundland) in opening a lead mine at a spot on the "French Shore" of Newfoundland; and that he (Lord Tenterden) was to request us to take the papers into consideration, together with those already before us.

In obedience to your Lordship's commands we have the honour to

Report—

That the opening and working of the lead mine on the "French Shore," *close to the beach*, as described by Governor Hill, is against the terms of the Treaties, which provide against permanent occupation.

Your Lordship may therefore, in our opinion, properly concur with Lord Kimberley in the measure which he proposes to take.

We have, &c.
(Signed) J. D. COLERIDGE.
HENRY JAMES.
J. PARKER DEANE.

No. 18.

The Law Officers of the Crown and Dr. Deane to Earl Granville.—(*Received October* 23.)

Temple, October 22, 1873.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us four letters which had been received from the Admiralty and Colonial Office, relative to a voyage which had recently been made by Captain Miller, of Her Majesty's ship "Sirius," round the Newfoundland fisheries, to his proceedings during the voyage, and to the correspondence with the French naval authorities which had resulted therefrom.

That the circumstances to which, at that moment, most importance was attached, were those connected with the occupation by a Frenchman of a salmon fishery on the Ponds River, on the north-west coast of Newfoundland, within the limits where the French enjoyed Treaty rights to the fisheries.

That the facts connected with the question, as stated in the various papers forwarded therewith for our information, would be found to be as follows:—

That by the Royal Instructions to Governors of Newfoundland in 1789 and 1792, permission was given to the French at that time to fish in rivers to the extent of half a mile above their mouths, but no further. That in the Confidential Instructions to the Commissioners appointed on behalf of Her Majesty's Government in 1859, Sir E. Lytton, then Colonial Secretary, stated that "this permission was in excess of the privileges guaranteed to the French by the Treaties, and Her Majesty's Government are not aware whether it was renewed with peace in 1815."

That the Reports made in 1821 by a French Commission charged with an examination of the French fisheries spoke in several places of the advantages offered by the salmon fisheries in terms implying that, up to that time, they had been pursued only by British settlers.

That an extract from Hautefeuille's "Codes des Grandes Pêches," spoke of the manner in which those salmon fisheries were distributed in 1832, 1837, and 1842, and also of the mode in which they were to be conducted according to the French Regulations of 1842, viz., by "barrages" (raells or weirs) made across the rivers or streams. That the same provision was repeated in the French Decree of 1852 (Article 42).

That complaints having been made in 1842 by British settlers at Cod Roy that the French had interfered with them while fishing for salmon, the question whether

the French had the right to fish for all kinds of fish or for codfish only was referred to the then Queen's Advocate, who reported on the 7th July, 1843, "that with respect to the description of fish which the subjects of France were entitled to take, he did not find, either in the Treaties or Declaration referred to, any limitation whatever."

That the actual salmon fishery now in question would seem to have been in the possession of an English subject named Gauge or George from the year 1771 or thereabouts, and to have been taken from him by the French in 1848 (see Captain Lock's Report, 2nd October, 1848, and inclosures in Colonial Office letter of the 10th April, 1852, where it was also stated that the French exacted from the British settlers half the produce of all the river fisheries from Cape Ray to Cape Norman).

That in reply to an inquiry made by the Admiral on the station in 1853, the Lords Commissioners of the Admiralty were informed in a letter from that Office, dated the 22nd August, 1853, that "it was clearly Lord Clarendon's opinion that the French had no rights under Treaty to fish in any of the rivers or mouths of rivers in Newfoundland, and that their right was restricted to the sea fisheries alone, but without reference to any particular species of fish."

That this opinion was subsequently confirmed by the Law Officers of the Crown in their Report of the 24th March, 1859, which stated: "With reference to all fisheries in rivers, and especially to salmon fisheries therein, we entirely concur with the view taken by the Earl of Clarendon that they are not within the scope of the Treaties and Declarations, and that the French have no right thereto, their fishery rights being limited to fishing in the sea for all kinds of fish. They have certainly no right to interrupt or molest any British subjects fishing for salmon in rivers, or to fish either for salmon or any other fish whatever in any river in Newfoundland."

That no steps, however, appear to have been taken to enforce the view taken by Lord Clarendon. The Governor of Newfoundland, in a despatch dated the 9th June, 1856, stated that "the French have practically excluded the English from the salmon fisheries."

That in the French "Tableau de Répartition" of fisheries drawn for in 1852, there were enumerated eight salmon fisheries on the west and six on the east coast. Of those, however, only one would appear to have been fished by the French at the time of Mr. Perley's tour round the fisheries in 1857, that one being the River of Ponds now in question; and only two at the time of the Mixed Commission in 1859, one of those, again, being the River of Ponds fishery. That both Mr. Perley and the Commissioners gave, in their Reports, a minute description of the manner of conducting the fishery by raells or weirs placed entirely across the river, in exactly the manner now described by Captain Miller.

That in 1863 the question of the salmon fisheries in rivers was again raised by Sir A. Bannerman, then Governor of Newfoundland, in consequence of a report received from Captain Hamilton, of Her Majesty's ship "Vesuvius," who stated that he had been informed by the French naval officer that they claimed the right of salmon fishery in rivers, and that otherwise "they would be unable to fish the River of Ponds in that bay, the best river on the west coast, as from the heavy sea that sets into that bay, and the strong currents at the mouth of the river, they were obliged to set their nets some distance up the fresh water."

That on that occasion Lord Russell, while concurring in the view taken by the Duke of Newcastle that the French rights of fishery were limited to the sea, was of opinion that if British fishermen generally remained undisturbed by the French, it was unnecessary that the question should be mooted.

That a complaint made by a British subject in 1868 that he had been interrupted by the master of a French merchant-vessel while fishing in the River Castor, and half of his fish taken from him, fell to the ground for want of evidence, though the French naval officer seemed disposed to admit that such interference was unjustifiable.

That since that year the question of the right of the French to the salmon fisheries in rivers had, on several occasions, been raised by the British naval officers of the station, but without any definite result.

That in 1859 the French Captain at Basset was reported to have agreed with Captain Pasley, of Her Majesty's ship "Niobe," that the French had no right to the fresh-water fishing, but in the case of the Rivers of Ponds and Castors, he seemed to have imagined the French originally fished those rivers by mutual agreement with the English.

That the replies given in 1872 by the Governor of Newfoundland to certain questions put by Captain Brown, of Her Majesty's Ship "Danae," which were submitted to the Law Officers for their approval, stated that the question of the right

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of the French to the salmon fishing in rivers, and of the distance up the rivers to which such right extends, was in dispute.

That, under those circumstances, the questions which suggested themselves, and on which your Lordship would be glad to have our opinion, were the following:—

1. Whether and to what extent the salmon fishery on the Ponds River, having regard to the place where it is carried on and the means employed, was in excess of the rights of fishery which the French could properly claim under the several engagements entered into by this country.

2. Considering the length of time for which it has been carried on undisturbed, and to all appearance in the same manner as at present, how far Her Majesty's Government would now be justified in making it the subject of a special remonstrance to the French Government, or whether it must not more properly be classed among the questions in dispute between the two Governments, to be discussed by the Mixed Commission to which it was intended that the general question should shortly be referred.

3. What notice could properly be taken of the act of Captain de Boissoudey in informing the French occupant of the fishery that he not obey the notice to quit served on him by Captain Miller's orders.

That Mr. Hammond was further to state that your Lordship would be glad to have our opinion generally on Captain Miller's proceedings and correspondence, and to learn whether we concurred in the opinion expressed by the Colonial Law Officer on the several questions involved.

That, in addition to the papers specially connected with the points at issue, copies were inclosed of printed Memoranda drawn up at that Office, giving a history of the general question from its origin to the present date, with so much of the recent correspondence as might be useful to us for purposes of reference.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that, with reference to his letter to us of that day's date relative to the Newfoundland Fisheries question, he was directed by your Lordship to point out to us that, in the event of the appointment of Magistrates for that part of the island on the coast of which the French had fishery rights, a very serious conflict of jurisdiction would be likely to occur from the contradictory provisions of the Colonial Acts and of the French Fishery Regulations with regard to salmon fisheries.

That Mr. Hammond inclosed copies of the Acts in question, and we would perceive that section 2 of the Act 23 Vict., cap. 8, positively forbade the construction of weirs or similar contrivances across any rivers for the purpose of salmon fishing, and that the Act contained no provision such as inserted in the later measure of 1862 (25 Vict., cap. 2), reserving "the rights and privileges granted by Treaty to the subjects or citizens of any State or Power in amity with Her Majesty."

That it might be contended that the former Act, although no special reservation clause was inserted in it, must be taken to have been made subject to any rights which were secured to the French by Treaty; but it might be apprehended that the British Magistrates would consider themselves bound to enforce the Colonial Law against French fishermen, while the French naval officers would undoubtedly maintain that such fishermen were entitled to follow the course prescribed by Article 42 of the French Regulations, to the effect that the salmon fishery might be conducted by means of weirs or nets in the streams or rivers.

That Mr. Hammond was to request that we would take the matter into our consideration, and would favour your Lordship with our opinion: (1) whether the Colonial Act, 23 Vict., cap. 8, should be construed as if there had been a special reservation of Treaty rights in it; and (2) as to the best mode of avoiding the difficulty above indicated.

In obedience to your Lordship's commands we have the honour to

Report—

1. That we concur in the opinion given by the Law Officers on the 24th March, 1859, "that the fisheries in rivers are not within the scope of the Treaties or Declarations made with or to the French Government by the Government of Great Britain, and that the French have no right to the fishery in rivers, their rights being limited to fishing in the sea, and on the coast, for all kinds of fish. And that the French have certainly no right to interrupt or molest any British subjects fishing for salmon, or any other fish whatever in any river in Newfoundland."

At the same time we are of opinion that British fishermen have not the right to interfere with the French fishermen by running their salmon nets out from the shore into the sea, so catching the fish as they pass along the shore—a practice which, from the papers transmitted to us, seems to prevail, and which interferes with the French sea fishery.

As we understand the facts, the concession said to have been contemplated, by which the French were to be allowed to fish a certain distance up the rivers, was never actually made. But if it had been or were made, we should be of opinion that the concession was but a licence to the French to fish as the British fishermen do, and would not warrant the French in claiming an exclusive fishery in those river waters, or the right to use their own means for catching fish in the rivers.

Apart from this concession—and it seems to us that since the French claims are made to rest on Treaty rights they cannot rely upon the concession—the French pretensions, if good to any extent at all, go to the exclusive right of salmon fishing, however far the rivers may run into the heart of the country.

The words of the Treaties, and of the engagements made by this country, seem to us to give the French a right of uninterrupted fishery of all kinds of fish along the sea coast, but do not give them any right of fishing in any of the rivers.

In answer, therefore, to the first question, we are of opinion that the salmon fishery on the Ponds River, having regard to the place where it is carried on, is in excess of the rights of fishery which the French can properly claim under the several engagements entered into by this country.

And with respect to the means employed by the French, we are of opinion that the French, having no right to fish at all, must, if they obtain any leave or licence to fish, employ only those means which are allowed by the laws of Newfoundland.

2. The second question is rather a matter of policy than of legal rights; but since your Lordship has called our attention to and desired our opinion upon the subject, we submit, for your Lordship's consideration, the following reasons why a special remonstrance should at once be made by Her Majesty's Government to the French Government:—

(*a.*) Her Majesty's Government should not, we humbly conceive, suffer without immediate remonstrance the rights of Her Majesty's subjects and a part of Her Majesty's dominions to be violently disturbed and forcibly occupied by the subjects of a foreign Power.

(*b.*) If, however, the disturbance of the rights and the occupation of the soil has been from any motive submitted to for some time, a special remonstrance is the more urgently required that the mischief may be put an end to, and, at least, not extended further.

(*c.*) Supposing no remonstrance to be made, other rivers may be occupied by the same means and in the same manner as the Ponds River. The French will thus have their title, such as it is, strengthened both by lapse of time and extended possessions.

(*d.*) The French Government has a right to know, in the clearest manner, before any question is raised at the Mixed Commission, that Her Majesty's Government denies the assumed rights of the French in the rivers of Newfoundand, and a special remonstrance seems to us the most direct and proper manner of informing the French Government to that effect.

(*e.*) If a remonstrance is not made, the French Government may not unfairly urge before the Mixed Commission the acquiescence of the British Government.

(*f.*) The conduct of Captain de Boissoudey is a further reason why the remonstrance should not be delayed.

3. That we are of opinion that although some notice may properly be taken of Captain de Boissoudey's conduct, that notice should be very moderate and guarded, and possibly confined to an expression that Her Majesty's Government does not press that subject further owing to the instructions which have been sent to the French naval officers. The difficulty which we have in answering the question with precision and definitely is that it goes to the root of the whole matter. If the French had no right, then Captain Miller acted quite properly, and the conduct of the French officer was altogether wrong. But if the French had the right contended for, then Captain Miller gave a notice which Captain de Boissoudey was justified in telling the French occupant to disregard. We think, therefore, that such a notice as we have suggested above will be sufficient.

In answering these questions we have not lost sight of a point raised by Admiral Seymour in his letter of June 1853, namely, the inconvenience and anomaly of allowing

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French officers to exercise a jurisdiction over British subjects within Her Majesty's dominions at sea or on land. But this anomaly is the necessary consequence of the Treaties, and your Lordship may think it a matter fit for the consideration of the Mixed Commission.

4. We think Captain Miller's proceedings and correspondence show considerable ability and discretion. And we agree generally in the opinions expressed by the Colonial Law Officer on the several questions involved. In one respect, however, we differ from him, since we are of opinion that the French have no right of fishing in the rivers whether above or below high-water mark.

Referring to Mr. Hammond's second letter of the 6th October, the difficulty suggested will not arise if we are right in our opinion that the French have no fishery rights in the rivers. The 25 Vict., cap. 2, being limited to fisheries on the coast, properly has the section 10 relating to Treaty rights, whilst 23 Vict., cap. 8, regulates the river fisheries, as to which there are no Treaty rights.

But if we are mistaken in our opinion upon the French Treaty rights, and these extend to the rivers in Newfoundland, the French may, notwithstanding the 23 Vict., cap. 8, exercise their rights in any manner which they may deem fit, and the Colonial Act may properly be repealed.

We have, &c.
(Signed) J. D. COLERIDGE.
HENRY JAMES.
J. PARKER DEANE.

No. 19.

The Law Officers of the Crown and Dr. Deane to Earl Granville.—(*Received November* 5.)

My Lord, *Temple, November* 5, 1873.

WE are honoured with your Lordship's commands signified in Lord Enfield's letter of the 31st ultimo, stating that on the 22nd instant we favoured your Lordship with our Report on various points submitted to us in Mr. Hammond's letters of the 6th instant, respecting the Newfoundland fisheries and the questions in dispute between this country and France.

That after recapitulation of the letters above referred to, our Report states at the fifth paragraph, "The words of the Treaties, and of the engagements made by this country, seem to us to give the French a right of *uninterrupted* fishery of all kinds of fish along the sea-coast, but do not give them any right of fishing in any of the rivers."

That we were aware, from the correspondence so recently before us, that the French Government claim not only the *uninterrupted*, but the *exclusive* right of fishing on the so-called "French Shore" of Newfoundland, which claim is based to a great extent upon the wording of the British Declaration, signed on the same day as the Definitive Treaty between Great Britain and France, the 3rd September, 1783, and which states: "His Britannic Majesty will take the most positive measures for preventing his subjects from *interrupting* in any manner by their competition the fishery of the French during the temporary exercise of it which is granted to them upon the coasts of the Island of Newfoundland," &c.

That we were also aware that the question of the right of French subjects to *exclusive* fishery upon the so-called "French Shore," irrespective of the question whether concurrent fishery might not be carried on as long as it did not interrupt the operations of the French fishermen, has been more than once before the Law Advisers of the Crown.

That on the 30th May, 1835, in answer to a reference of a Board of Trade letter of the 12th July, 1834, on this question, the Law Officers reported that, "having taken into consideration the above-mentioned letter from the Board of Trade, together with the Treaties to which it refers, we are of opinion that the subjects of France '*have the exclusive right of fishery* on the part of the coast of Newfoundland specified in the Vth Article of the Definitive Treaty signed at Versailles on the 3rd September, 1783.'"

That we should find in the accompanying volume the Report *in extenso*, as well as the Board of Trade letter to which it refers, which papers had not then been before us, although the Report was alluded to at p. 8 of the printed Memorandum drawn up in the Foreign Office, which was again inclosed; that a later Report of the Law

Officers, however (also alluded to in the same place, and printed in full at p. 60), as we should see, somewhat modified the previous one.

That your Lordship is desirous of ascertaining the precise meaning which you may attach to the opinion contained in our Report above referred to, that the words of the Treaties and of the engagements made by this country seem to give the French "a right of *uninterrupted* fishery" of all kinds of fish along the sea-coast, &c.; whether, in fact, we consider that the French and English fishermen have a concurrent right of fishing on the coast in question as long as the English fishermen do not in any way interfere with or interrupt the French fishing operations, or whether we are of opinion that the French fishermen can properly claim the right of *exclusive* fishing, to the exclusion of the British and without regard to the above conditions.

In obedience to your Lordship's commands, we have the honour to

Report—

That, in our opinion, the French have not the right of exclusive fishing in the full sense of those words, which would make every act of fishing on the part of the British illegal, as contrary to the Treaty and Declaration.

But the French have the right of exclusive fishery in the sense that their fishing operations are not to be interfered with or interrupted by the English. For instance, supposing the French for any reason were to abandon the coast, or any part of the coast, for a time, so that there were no French boats in the waters, we apprehend the British would have a right in such a case to fish the unused parts. And we think this is the meaning of the words "competition" or "concurrence" in the Treaty of 1783, showing that the same waters are not to be fished at one and the same time by French and British, but that the latter are in all cases to give up fishing in waters which the French are in fact occupying.

We have, &c.
(Signed) J. D. COLERIDGE.
HENRY JAMES.
J. PARKER DEANE.

No. 20.

The Law Officers of the Crown and Dr. Deane to the Earl of Derby.—(*Received August* 12.)

My Lord, *Temple, August* 10, 1876.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 26th ultimo, stating that the Law Officers of the Crown had from time to time had referred to them from the Foreign Office certain questions arising out of some long-outstanding matters of dispute between this country and France in regard to French rights of fishing on certain given points of the coast of Newfoundland, by virtue of formal engagements entered into between the two countries; and, as we were no doubt aware, negotiations had from time to time been entered upon at Paris with a view to a settlement of these outstanding questions, but hitherto without any satisfactory result; and renewed negotiations of a more or less informal character, which were conducted at Paris during last year and the early part of the present year, between Captain Miller, as British Commissioner, and Captain de Boissoudy, as the Commissioner for France, were broken off in the month of March last, under the circumstances stated in the Colonial Office letter thereto annexed.

That that letter, as we should see, inclosed some draft Articles which Lord Carnarvon, in communication with Captain Miller, and with Mr. Carter, the Premier of Newfoundland, were desirous should be submitted to the French Commissioner, as containing the basis of the arrangements to which the Imperial Government and that of Newfoundland were ready to consent, with a view to a settlement of the matters in dispute, though, as we should see by the correspondence, they were not to be put forward as being textually agreed to.

That before, indeed, they could be so submitted formally to the French Commissioner, your Lordship was desirous of being favoured with any observations we might desire to offer in regard to any amendments in form, or any alterations which it might appear to us desirable to introduce into those Articles, without, however, affecting their substance; and since the principles involved in them had, as Lord Tenterden had said, been already agreed to by the Imperial and Colonial Governments (or rather by the

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Premier of Newfoundland on behalf of the latter), it was unnecessary that he (Lord Tenterden) should call our attention generally to those principles.

That there was one point, however, to which it might be desirable that he should advert, as it came prominently forward in Article I of the draft Articles, and involved, perhaps, the most serious point of contention between the fishermen of the two countries, namely, how far French fishermen can claim, at those points of the coast where they have fishery rights, exceptional privileges of fishing over British or Colonial fishermen.

That the point at issue arose out of the wording of the British Declaration signed at Versailles on the 3rd September, 1783, which stated that "to this end (viz., to prevent all 'foundation of dispute for the future'), and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coast of the Island of Newfoundland; and he will for this purpose cause the fixed settlements which shall be found there to be removed."

That out of that Declaration had arisen the claim of the French Government on behalf of their fishermen to the exclusive right of fishing on the parts of the coast in question during the fishing season, to the entire exclusion of British fishermen, a pretension which had never been admitted by this country, though it had formed the subject of much discussion, not only with the French Government, but amongst legal and other authorities in this country, who at various times had taken very opposite views of the exact privileges intended to be accorded to the French (or which could, in fairness, be claimed by them) under the Declaration in question.

That, in Article I of the draft Articles then inclosed, it was proposed to insert the words, "that the French fishermen shall be deemed, so long as this Convention is in force, to have the first claim to any particular position on the water, but not so as to exclude the British from such rights of free concurrent fishing as they have hitherto enjoyed and are entitled to claim."

That Lord Tenterden had thought it right to enter into the above brief explanation in order to account for the more or less ambiguous terms which that Article contained, but which your Lordship understood were intended, whilst still maintaining the right of British fishermen to concurrent fishing, to yield the preference of station in point of fact to French fishermen, a concession which the Colonial Office are of opinion would be found acceptable with the French Commissioner, whilst the details of such an arrangement could be determined by the Joint Commission which it was proposed to appoint to regulate all such matters on the spot.

That, in drawing our attention to that particular Article, your Lordship, at the same time, directed Lord Tenterden to observe that, in your Lordship's opinion, it was most essential in any new negotiation to avoid the use of ambiguous, or vague, or contradictory expressions, such as might give rise to probable, or even possible, embarrassment or dispute in the time to come; and that your Lordship would request that, in any amendments which we might think fit to suggest in the proposed Articles then submitted to us, we would keep that principle prominently in view.

That your Lordship did not desire to offer any further observation upon the draft Articles in their present stage, but that your Lordship would be glad to be favoured with our Report on that subject at our earliest possible convenience, as it was most important that every facility should be afforded for a speedy settlement of those outstanding questions, and the British Commissioner has already proceeded to Paris with a view to an immediate resumption of negotiations.

That the draft of the answer which your Lordship had caused to be returned to the Colonial Office was also annexed.

We are also honoured with a further letter from Sir Julian Pauncefote, bearing date the 28th ultimo, inclosing copy of a despatch from Her Majesty's Ambassador at Paris relative to the above question, and to request that we would take that despatch into our consideration with reference to the papers then before us.

In obedience to your Lordship's commands, we have the honour to

Report—

That the Article A of the proposed Convention is, in our opinion, so framed that, instead of lessening, it will add to the difficulties which have, down to the present time, beset the Newfoundland Fisheries question.

That the expression, "first claim to any particular position on the water," is vague and ambiguous in itself, and is not made more certain by the following words: "but not so as to exclude the British from such rights of free concurrent fishing as they have hitherto enjoyed and are entitled to claim."

The rights of the British are the very things in dispute, and on the first occasion, if the Convention be agreed to, will arise under it the question, what rights have the British hitherto enjoyed; what rights are they entitled to claim?

Again, what are the rights and what is the meaning of a "free concurrent fishery," which is "not to interrupt in any manner by competition" the French fishermen? (British Declaration, 3rd September, 1783.)

Further, what is the meaning of "the first claim to any particular position on the water"?

Take the case of a British vessel taking up a position at a distance from and even out of sight of French vessels. Is the British ship to keep that place, or give it up at the demand of the French vessel which may come up some time afterwards?

To take another case. How far do the rights of the French extend from the particular position on the water originally taken up?

We could trouble your Lordship with other instances of complication which, as it seems to us, would arise under Article A. But we merely suggest, for your Lordship's consideration, those matters which immediately occur as vague and ambiguous to the extent of making the important Article A utterly useless, if not mischievous.

We have not the local or practical knowledge which would enable us to say how this Article could be amended. And we are pressed by the observation of Mr. Carter, that if a distance were given within which no British vessel should fish the French might occupy the whole fishing-ground to the exclusion of the British.

We can, therefore, only submit to your Lordship the objections which occur to us, and the reasons for those objections.

We think Article F should follow after Article D, and be placed before the present Article E.

And in Article G, instead of "belonging," the words "which belong" might be used as a more positive assertion of the fact.

We further suggest the omission of the words, "by their competition," at the end of the first paragraph of Article J.

We have, &c.

(Signed) JOHN HOLKER.
HARDINGE S. GIFFARD.
J. PARKER DEANE.

Annex.

ARTICLE (A).

THE object of this Convention is, while ratifying, in the name of the Queen, all the rights of fishing granted to the French on that part of the coast of Newfoundland on which they enjoy such rights under existing Treaties; to secure to the French and to the British alike their unquestioned privileges of concurrent fishing on the said part of the coast; and for this purpose the French fishermen shall be deemed, so long as this Convention is in force, to have the first claim to any particular position on the water, but not so as to exclude the British from such rights of free concurrent fishing as they have hitherto enjoyed, and are entitled to claim.

ARTICLE (B).

All differences between the subjects of the two nations in matters relating to the fisheries shall be arranged or determined by a Mixed Commission, composed of two officers, one of the British navy and one of the French navy, specially appointed on the part of their respective Governments, who will act in conformity with joint instructions based on these Articles.

There shall be no appeal from any joint decision of the Fishery Commission.

In the event of the Commissioners being unable to come to a joint decision upon any matter before them, the matter shall be referred to their respective Governments.

The Commissioners shall, subject to such instructions as may be agreed upon between the two Governments, have power to punish any person contravening any order or decision of the Commissioners by fine, not exceeding in amount, and in default of payment of such fine, to seize vessels, boats, or other property afloat of such person; and the Commissioner shall also have power to enforce any order made by them by the removal of anything which, in their opinion, may be an obstruction to the full enjoyment of the respective fishery rights of the British and French.

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ARTICLE (C).

A sufficient police shall act under the orders of the Joint Naval Commission, in order to provide that all Regulations of the Commission issued in pursuance of the above-mentioned instructions shall be obeyed.

ARTICLE (D).

The British Government will not oppose the practice at the present time followed by French fishermen, of leaving on British territory, during the winter, boats, salt, and fishing gear, nor will they object to the French building a dwelling-house for each guardian left by them in charge of their property during their absence.

ARTICLE (E).

The British Government will not prevent the French from purchasing bait (both herring and capelin) on shore or at sea on the southern coast of Newfoundland at such times as British subjects may lawfully take the same, free from all duty or restriction not imposed on British subjects.

ARTICLE (F).

The French shall have the right to appoint guardians, either French or British, to watch over their property when they are absent from the coast after the fishing season.

Should these guardians be French, their number shall be limited to one in each harbour or port where the French usually fish; such French guardians shall not be permitted to fish out of the season except with hook and line for cod, nor shall they engage in the salmon, seal, herring, or other fishery.

ARTICLE (G).

The laws of Newfoundland for the protection of the salmon fishery* shall be equally observed and carried out in that part of the coast on which the French enjoy rights of fishing as in other parts; the right of fishing in all rivers, estuaries, and inland waters from the sea belonging exclusively to the British.†

ARTICLE (H).

The strand upon which the French may exercise their fishery rights for the purposes declared in the aforesaid Treaties shall, subject to the provisions of this Convention, extend to one-third of an English mile inland from high-water mark on the coast-line as shall be determined by the Commissioners.

ARTICLE (I).

Subject to the limitations contained in the three immediately succeeding Articles, the British Government will cause to be removed any buildings erected on the strand, if objected to by the French Government, on a declaration from the Fishery Commissioners that the buildings are interfering with the due exercise of French fishery rights.

ARTICLE (J).

The existing British Settlements in St. George's Bay, Cod Roy, Bay of Islands, Bonne Bay, and White Bay shall remain undisturbed, and there shall be no interruption by the French to fishing by the British in those bays, nor interference with their buildings and inclosures there; nor shall there be any interference with any existing erections or buildings on any other part of the coast where the French have a right of fishery during the season which do not actually interfere with the fishery privileges of the French, as shall be determined by the Commissioners; nor shall British subjects be molested in fishing in any part where they do not actually interrupt the French by their competition.

The existing French erections at Cod Roy Island, &c., shall not be interfered with by the British.

ARTICLE (K).

No building or inclosure removable in pursuance of the foregoing Articles as interfering with the French fishery privileges which has been erected for five years, or which shall hereafter be erected on the strand, with the consent of the Fishery Commissioners, shall be removed until the Government requiring such removal shall have paid to the owners such compensation as shall be agreed upon by the Fishery Commission.

In case the Commission cannot agree upon the amount of compensation, the case shall be referred to the respective Governments; provided always that no such compensation shall be required in the

Notes by Mr. Carter:—

* See Consolidated Statute 491; also Statute, 1875, Newfoundland.

† If this Article is considered too general, as including the sea, let it be confined inwards from the mouths of rivers, &c., as may be defined by the Commissioners.

respect of the removal of any building which shall be hereafter erected without the consent of the Fishery Commission.

ARTICLE (L).

The British Government reserves the right of occupying such portions of the strand as may be required for works of defence, or for roads, railways, piers, lighthouses, for the working of mines or quarries, or for other works of public use or benefit, whether made by Government or by private persons under the authority of Government; but due notice shall be given to the French Government of any intended exercise of this right on the strand; and any erection made thereon by private persons interfering with the user of French fishing privileges shall be subject as to site to the consent of the Fishery Commissioners.

ARTICLE (M).

The British Government reserves the right of authorizing the occupation of land and the erection of buildings for all purposes within the strand by any person whatsoever (under the laws of Newfoundland regulating grants and licences generally applicable to British subjects), subject to the consent of the Fishery Commissioners as to site; but any such building which shall hereafter be actually interfering with the exercise of French fishing privileges erected under this clause, for purposes other than those coming within the terms of Article L, shall be removable on payment of compensation as provided by Article K.

ARTICLE (N).

The French season of fishery shall be held to commence on the 30th April, and to terminate on the 5th October in each year.

ARTICLE (O).

This Convention shall be terminable at any time not less than a-year after notice to terminate the same shall have been given in writing by either of the High Contracting Powers to the other; provided always that such notice shall not be given so as to terminate the Convention during any fishery season as hereby defined.

No. 21.

The Law Officers of the Crown to the Earl of Kimberley.

Temple, January 14, 1882.

My Lord,

WE were favoured with your Lordship's commands signified in Mr. Bramston's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch which was addressed to the Governor of Newfoundland in August last, authorizing on certain conditions the issue by the Government of Newfoundland of grants of land on the west and north-east coasts of that island, where the French enjoyed certain rights connected with the fisheries under Treaties between France and this country.

That we would observe that the Colonial Government were requested to prepare and submit, for the approval of Her Majesty's Government, a form of grant or lease, reciting all the Articles of the Treaties between Great Britain and France relating to the fisheries, and the Declaration and counter-Declaration of 1783; and further, that the lands should be granted subject to the rights secured to the French thereby, and to the orders and directions which Her Majesty's Government might from time to time make in relation thereto.

That the inclosed draft form of land-grant had accordingly been drawn up by the Colonial Government of Newfoundland, and Mr. Bramston was desired to request that we would favour your Lordship with our opinion whether such form of grant was proper and sufficient, especially in reference to the first proviso, upon which the following points appear to arise:—

1 Whether, in view of possible arrangements with the French Government in relation to the shore on that part of the coast to which their rights extended, the grants should not be made subject to such "Rules and Regulations" as might at any time, and from time to time, be issued by or on behalf of Her Majesty's Government for the purpose of securing to the French the full enjoyment of their Treaty rights, and for preventing any interruption to them in the exercise of their said rights, and also subject to any special orders and directions for the like purpose which might be issued in like manner with reference to any particular grant or to any particular locality.

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2. Whether there should not be a covenant in the grant binding the grantee to observe such Rules, Regulations, Orders, and directions, under penalty of re-entry by the Crown.

3. Whether the grant should not also contain a declaration that it should not be competent to the grantee to dispute the validity of any such Rules, Regulations, Orders, and directions, if purporting to be issued for the purposes aforesaid, but that the same should be deemed absolutely binding on him from the date at which they were notified to him by publication in the Gazette, or of a special character by notice left on the land.

4. Whether the "Rules and Regulations" should not provide for the granting of permits to build, and for the revocation of such permits, by the Government, and the removal of buildings on proper terms as to compensation.

That Mr. Bramston was to request our advice whether it would be desirable that the grant should be made in form of a lease for a term of 999 years, with the necessary covenants, provisoes, declarations, rather than as a grant in fee simple, to which the covenants and restrictive clauses would appear to be technically less applicable.

That Mr. Bramston was to explain, in reference to No. 3, that it was, in the opinion of Her Majesty's Government, very necessary to preclude the possibility of any question arising out of those grants which would necessitate a decision by the Colonial Courts as to the extent of French rights under the Treaties and Declarations, and to inquire whether the effect of No. 3 could be adequately obtained by a proviso in the grant, or whether it would be better to urge the Colonial Legislature to enforce it by enactment.

That your Lordship would be glad to be favoured with our opinion on the matter at our earliest possible convenience, as the Government of Newfoundland were very desirous that the form of grant should be settled without delay, and that your Lordship would be glad if we would favour your Lordship with any general observations on the subject which might appear to us to be desirable.

In obedience to your Lordship's commands we have the honour to

Report—

That we have taken into consideration Mr. Bramston's letter of the 29th December, 1881, and have to observe that we think it will be desirable that a lease for a term of years should be substituted for a grant, and that the lessee should be a party to the instrument, and bind himself to the covenants contained in it. If, however, there should be on the part of the Colonial Government a strong preference for the making of grants rather than leases of the lands in question, we think that the same objects might be accomplished by inserting a condition that, on breach of any of the covenants or stipulations, the grant should become void, and the land should forthwith thereupon revest.

We are also of opinion that the suggestions contained in paragraphs 1, 2 3, and 4 should be carried into effect. The lease should be made dependent upon the observance by the lessee of any Rules, Orders, and Regulations which at any time and from time to time may be made and issued by or on behalf of Her Majesty's Government, to declare, control, protect, regulate, or affect the right of the French under any existing or future Treaty, and like observance should be obtained for any special Rule, Order, Regulation, or direction affecting any particular holding or locality.

The lease may also contain a covenant that no building should be erected except by permission of the lessor, or in pursuance of the Rules and Regulations, and that such building may be removed on due compensation being paid.

The lessee should covenant to fulfil and obey all such Rules, Orders, Regulations, and directions as may be issued, and which should be absolutely binding upon him without his having any power of questioning their validity or applicability.

If these covenants be entered into, and power of re-entry given in the event of their non-fulfilment, it does not occur to us that any legislation will be necessary.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.

Annex.

Proposed Form of Land Grant.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To all to whom these presents shall come, greeting:

WHEREAS, by Treaties between Great Britain and France relating to the fisheries, it was agreed between the Great Contracting Parties as follows, viz.:—

By Article XIII of the Treaty of Utrecht, 1713, that "the island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain, and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this Treaty, or sooner if possible, by the Most Christian King to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence and in the gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there." And by Article V of the Treaty of Paris, 1763, that "the subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII of the Treaty of Utrecht, which Article is renewed and confirmed by the present Treaty (except what relates to the Island of Cape Breton, as well as to the other islands and coasts in the mouth and in the Gulf of St. Lawrence), and His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence on condition that the subjects of France do not exercise the said fishery but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the Island of Cape Breton, out of the said Gulf the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of 15 leagues from the coasts of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia and everywhere else out of the said gulf shall remain on the foot of former Treaties." And by Article VI of the same Treaty, "the King of Great Britain cedes the Islands of St. Pierre and Miquelon in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said islands, to erect no buildings upon them but merely for the convenience of the fishery, and to keep upon them a guard of fifty men only for the police." And by Article IV of the Treaty of Versailles, 1783, that "His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland and to the adjacent islands, as the whole were assured to him by Article XIII of the Treaty of Utrecht, excepting the Islands of St. Pierre and Miquelon, which are ceded in full right by the present Treaty to His Most Christian Majesty." And by Article V of the said last-named Treaty, that "His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in 50° north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape John, passing to the north and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Ray, situated in 47° 50′ latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht." And by Article VI of the said last-named Treaty, that "with regard to the fishery in the Gulf of St. Lawrence, the French shall continue to exercise it conformably to Article V of the Treaty of Paris." And whereas by declaration of His Britannic Majesty, dated the 3rd day of September, 1783, it was declared that "the King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty will seek every means which shall not only insure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner by their competition the fishery of the French during the temporary exercise of it which is granted to them upon the coasts of the Island of Newfoundland; and he will for this purpose cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing-vessels.

"The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party, the French fishermen building only their scaffolds, confining

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themselves to the repair of their fishing-vessels, and not wintering there, the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations, and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel."

And whereas by counter-Declaration of His Most Gracious Majesty the King of France, dated the 3rd day of September, 1783, it was declared that "the principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel.

"The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

"As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns upon this matter, it is sufficiently ascertained by Article V of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

"In regard to the fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party, but to the middle of the channel; and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen."

And whereas by further Treaties between the said great Contracting Parties, viz., by Article VIII of the Treaty of Paris, 1814, it was agreed that "His Britannic Majesty, stipulating for himself and his allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, fisheries, factories, and establishments of every kind, which were possessed by France on the 1st January, 1792, in the seas, on the continents of America, Africa, and Asia, with exception, however, of the Islands of Tobago and St. Lucia, and the Isle of France and its dependencies, especially Rodrigues and the Seychelles, which several Colonies and possessions His Most Christian Majesty cedes in full right and sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and sovereignty to His Catholic Majesty." And by Article XIII of the said last-named Treaty, that "the French right of fishery upon the Great Bank of Newfoundland upon the coasts of the island of that name, and of the adjacent islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792." And by Article XI of the Treaty of Paris, 1815, that "the Treaty of Paris of the 30th May, 1814, and the Final Act of the Congress of Vienna of the 9th June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty."

Now know ye that we, of our special grace, certain knowledge, and mere motion, have given and granted, and by these presents do, for us, our heirs and successors, give and grant unto , in our Island of Newfoundland, heirs and assigns, all that piece and parcel of land situate and being and being of the dimensions specified in the diagram delineated on the other side hereof, and containing , with the appurtenances, except and reserved, nevertheless, out of this present grant, to us, our heirs and successors, all gold and silver, and all coals and other mines and minerals in or under the said piece or parcel of land.

To have and to hold (except as before excepted) unto the said , his heirs and asssigns, for ever, the said , paying unto us, as the price and consideration of the said land, the sum of dol. c. at the time of the ensealing and delivery hereof.

Provided always, and this grant is upon the express condition that the land hereby granted shall be holden by the said , heirs and assigns, subject to such rights as are secured to the subjects of France under and by virtue of the said recited Treaties and Declarations, and also subject to such Orders and directions as shall from time to time be made and declared by us, our heirs and successors, for the purpose of preventing any interruption to French subjects in the full enjoyment of the aforesaid rights so secured to them by the aforesaid Treaties and Declarations, and in the event of a breach by the grantee, heirs and assigns, of the conditions contained in this proviso, we hereby reserve to ourselves, our heirs and successors, the right to declare the grant hereby made forfeited, and thenceforth to re-enter and repossess the said land.

Provided also, and this grant is upon the further conditions that the said lands shall be holden upon, under, and subject to such Regulations as are now in force, or which may at any time hereafter be made by law, for the improvement and cultivation of lands within our said island, and subject to all such Regulations as are now in force, or which may at any time hereafter be made by law, for making roads, sewers, drains, canals, bridges, or other public work or improvement within our said island, or any part thereof, and for subjecting any lands therein situate, or the owners and occupiers of such lands, to rates and assessments, or other duties or services, for the purposes aforesaid, or for any of them; and that the said , heirs and assigns

shall at all times peaceably quit and deliver up possession to us, our heirs and successors, of all such parts of the land aforesaid as may be required for the purposes aforesaid, or any of them upon receiving such compensation (if any) as by law now in force, or hereafter to be made, in that respect, may be provided.

Given under the Great Seal of our aforesaid island of Newfoundland, at St. John's in our said island, this day of , in the year of Our Lord one thousand eight hundred and , and in the year of our reign.

Witness our trusty and well-beloved , our Governor and Commander-in-chief in and over our said island of Newfoundland and its dependencies.

By his Excellency's command,

(Signed)

Colonial Secretary.

Received the day and year above written, from the within-named grantee, the sum of , amount of consideration money of the land herein granted.

$

Registered volume, No. , Folio .

(Signed)

Her Majesty's Surveyor-General.

The foregoing is the form of grant of land in fee proposed. In cases of leases and grants of minerals and licences to search for minerals, also of licences of occupation of land and leases of land, the same recitals and proviso to be inserted.

No. 22.

The Law Officers of the Crown to the Earl of Kimberley.

Temple, February 3, 1882.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 31st ultimo, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 14th January last respecting the proposed land grants in Newfoundland; and Mr. Bramston was to state that your Lordship had ascertained, by telegraph, that the Colony strongly preferred a grant to a lease.

That Mr. Bramston was accordingly to request us to refer to our Report of the 14th, and to request that we would consider the inclosed draft Indenture, and advise your Lordship whether a grant in that form would meet the present case, and whether the language was proper and sufficient.

That Mr. Bramston was also to state that your Lordship was not informed whether the Colony might not prefer a Crown grant in the form of a deed-poll; and he was to transmit the accompanying draft of a grant in that shape, and to request that we would advise your Lordship whether a grant in the terms of that draft would answer the purpose equally well.

That Mr. Bramston was to explain that no provision was made in those drafts for prohibiting or regulating buildings, as, for reasons with which it was unnecessary to trouble us, it was arranged with the Premier of the Colony, when in this country, that the matter should be dealt with by regulation, and not in the grant itself.

In obedience to your Lordship's commands we have the honour to

Report—

That we think either of the drafts, as altered by us in red ink (in the copy of the draft supplied to the Solicitor-General), will be sufficient to meet the present case.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.

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Annex 1.

Draft Land Act (as approved by the Law Officers).

THIS Indenture made the day of , 18 , between Her Majesty the Queen of the one part, and , of (who with heirs and assigns , hereinafter referred to as the grantee) of the other part.

Whereas by Treaties between Great Britan and France relating to the fisheries, it was agreed between the Great Contracting Parties as follows, viz.:—

By Article XIII of the Treaty of Utrecht, 1713, that "the island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain, and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up within seven months from the exchange of the ratifications of this Treaty, or sooner if possible, by the Most Christian King to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to any right to the said island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish and to dry them on land in that part only, and in no other besides that, of the said Island of Newfoundland which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence, running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence, and in the Gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there." And by Article V of the Treaty of Paris, 1763, that "The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII of the Treaty of Utrecht, which Article is renewed and confirmed by the present Treaty (except what relates to the Island of Cape Breton, as well as to the other islands and coasts in the mouth and in the Gulf of St. Lawrence), and His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence on condition that the subjects of France do not exercise the said fishery but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said Gulf of St. Lawrence. And as to what relates to the fishery on the coasts on the Island of Cape Breton out of the said Gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at a distance of 15 leagues from the coasts of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia and everywhere else out of the said gulf shall remain on the foot of former Treaties." And by Article VI of the same Treaty "the King of Great Britain cedes the Islands of St. Pierre and Miquelon, in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said islands; to erect no buildings upon them, but merely for the convenience of the fishery, and to keep upon them a guard of fifty men only for the police." And by Article IV of the Treaty of Versailles, 1783, that "His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland and to the adjacent islands, as the whole were assured to him by the XIIIth Article of the Treaty of Utrecht, excepting the Islands of St. Pierre and Miquelon, which are ceded in full right by the present Treaty to His Most Christian Majesty." And by Article V of the said last-named Treaty that "His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland in 50° north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape John, passing to the north and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Ray, situate in 47° 50′ latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht." And by Article VI of the said last-named Treaty that, "With regard to the fishery in the Gulf of St. Lawrence, the French shall continue to exercise it conformably to the Vth Article of the Treaty of Paris." And whereas by declaration of His Britannic Majesty, dated the 3rd day of September, 1783, it was declared that "the King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only insure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French during the temporary exercise of it, which is granted to them upon the coasts of the Island of Newfoundland; and he will for this purpose cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing-vessels.

"The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds,

confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of his Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel."

And whereas by counter-Declaration of His Most Gracious Majesty the King of France, dated the 3rd day of September, 1783, it was declared that "the principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel.

"The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

"As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns upon this matter, it is sufficiently ascertained by the Vth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

"In regard to the fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the channel; and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen."

And whereas by further Treaties between the said Great Contracting Parties, viz., by Article VIII of the Treaty of Paris, 1814, it was agreed that "His Britannic Majesty, stipulating for himself and his allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, fisheries, factories, and establishments of every kind, which were possessed by France on the 1st January, 1792, in the seas, on the continents of America, Africa, and Asia, with exception, however, of the Islands of Tobago and St. Lucia, and the Isle of France and its dependencies, especially Rodrigues and the Seychelles, which several Colonies and possessions His Most Christian Majesty cedes in full right and sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and sovereignty to His Catholic Majesty." And by Article XIII of the said last-named Treaty that "the French right of fishery upon the Great Bank of Newfoundland upon the coasts of the island of that name, and of the adjacent islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792." And by Article XI of the Treaty of Paris, 1815, that "the Treaty of Paris of the 30th May, 1814, and the Final Act of the Congress of Vienna of the 9th June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty."

Now this Indenture witnesseth that in consideration of the covenants, Agreements, and Declarations hereinafter contained, and of the sums of dol. c. paid by the said to Her Majesty at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Her Majesty the Queen, of her special grace, certain knowledge, and mere motion, hath given and granted, and by these presents doth for herself, her heirs and successors, give and grant unto of in the Island of Newfoundland, heirs and assigns, all that piece or parcel of land situate and being and containing and of the dimensions more particularly delineated in the plan or diagram hereon with the appurtenances, excepting always and reserving to Her Majesty, her heirs and successors, all gold and silver and all coals and other mines and minerals in or under the said piece or parcel of land.

To have and to hold the said piece or parcel of land (except as hereinbefore excepted) unto the said , heirs and assigns, for ever.

Provided always, and it is hereby declared, that this grant is made upon and subject to the express condition that the grantee shall faithfully observe, obey, fulfil, and perform, all Rules, Orders, Regulations, and directions whatsoever, which may at any time and from time to time be made and issued by or on behalf of Her Majesty, her heirs or successors, to declare, control, protect, regulate, or affect the rights of the French under any existing or future Treaty, Convention, or Arrangement between Great Britain and France, whether such Rules, Orders, Regulations, or directions relate to the whole of that portion of the coast of the Island of Newfoundland where the French have rights for the time being, or to any part of such coast, or to the district or locality in which the land hereby granted is situate, or to any part of such district or locality, or especially to the land hereby granted.

Provided also, and it is hereby further declared that all such Rules, Orders, Regulations, and directions, as aforesaid, shall be absolutely binding upon the grantee from and after the publication thereof in the Government Gazette of the said island, and that the grantee shall not at any time question or dispute the validity or applicability of such Rules, Orders, Regulations, or directions, or any of them.

And the said grantee doth hereby covenant with Her Majesty, her heirs and successors, that will faithfully observe, obey, fulfil, and perform all such Rules, Orders, Regulations, and directions as aforesaid, and that will not at any time question or dispute the validity or applicability of such Rules, Orders, Regulations, and directions, or any of them.

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Provided also, and it is hereby declared that this grant is made upon the express condition that if at any time the grantee shall not have faithfully fulfilled and performed the aforesaid conditions, or any of them, then the grant hereby made shall become absolutely void, and it shall be lawful for Her Majesty, her heirs or successors, forthwith, or at any time thereafter, to re-enter and repossess the said land, as if this grant had not been made.

Provided also, and it is hereby declared, that this grant is upon the further conditions that the said lands shall be holden upon, under, and subject to such Regulations as are now in force, or which may at any time hereafter be made by law, for the improvement and cultivation of lands within our said island, and subject to all such Regulations as are now in force, or which may at any time hereafter be made by law, for making roads, sewers, drains, canals, bridges, or other public work or improvement within our said island, or any part thereof, and for subjecting any lands therein situate, or the owners and occupiers of such lands, to rates and assessments, or other duties or services, for the purposes aforesaid, or for any of them; and that the said grantee shall, at all times, peaceably quit and deliver up possession to us, our heirs and successors, of all such parts of the land aforesaid as may be required for the purposes aforesaid or any of them, upon receiving such compensation (if any) as by law now in force, or hereafter to be made in that respect, may be provided.

Annex 2.

Draft Deed-Poll (as approved by the Law Officers).

FRENCH TREATY RIGHTS.

Proposed Form of Land Grant.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To all whom these presents shall come, greeting:

WHEREAS, by Treaties between Great Britain and France relating to the fisheries, it was agreed between the Great Contracting Parties as follows, viz.:—

By Article XIII of the Treaty of Utrecht, 1713, that "the island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain, and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratifications of this Treaty, or sooner if possible, by the Most Christian King to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to any right to the said island and islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards, and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land in that part only, and in no other besides that, of the said Island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence, and in the gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there." And by Article V of the Treaty of Paris, 1763, that "the subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the Island of Newfoundland, such as it is specified in Article XIII of the Treaty of Utrecht, which Article is renewed and confirmed by the present Treaty (except what relates to the Island of Cape Breton, as well as to the other islands and coasts in the mouth and in the Gulf of St. Lawrence), and His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence on condition that the subjects of France do not exercise the said fishery but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well as those of the continent, as those of the islands situated in the said Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the Island of Cape Breton, out of the said gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of 15 leagues from the coasts of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia and everywhere else out of the said gulf shall remain on the foot of former Treaties." And by Article VI of the same Treaty, "the King of Great Britain cedes the Islands of St. Pierre and Miquelon, in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said islands; to erect no buildings upon them, but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police." And by Article IV of the Treaty of Versailles, 1783, that "His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland and to the adjacent islands, as the whole were assured to him by the XIIIth Article of the Treaty of Utrecht, excepting the Islands of St. Pierre and Miquelon, which are ceded in full right by the present Treaty to His Most Christian Majesty." And by Article V of the said last-named Treaty, that "His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between

the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforsesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in 50° north latitude; and His Majesty the King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Ray, situated in 47° 50′ latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht." And by Article VI of the said last-named Treaty, that "with regard to the fishery in the Gulf of St. Lawrence, the French shall continue to exercise it conformably to the Vth Article of the Treaty of Paris."

And whereas by declaration of His Britannic Majesty, dated the 3rd day of September, 1783, it was declared that "the King having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty, will seek every means which shall not only insure the execution thereof, with his accustomed good faith and punctuality, but will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner by their competition the fishery of the French, during the temporary exercise of it which is granted to them upon the coasts of the Island of Newfoundland; and he will for this purpose cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing-vessels.

"The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishery which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel."

And whereas, by counter-Declaration of His Most Gracious Majesty the King of France, dated the 3rd day of September, 1783, it was declared that "the principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that His Majesty has no other design than to render it solid and lasting, by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel.

"The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

"As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns upon this matter, it is sufficiently ascertained by the Vth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

"In regard to the fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party, but to the middle of the channel; and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen."

And whereas by further Treaties between the said Great Contracting Parties, viz., by Article VIII of the Treaty of Paris, 1814, it was agreed that "His Britannic Majesty, stipulating for himself and his allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, fisheries, factories, and establishments of every kind, which were possessed by France on the 1st January, 1792, in the seas, on the continents of America, Africa, and Asia, with exception, however, of the Islands of Tobago and St. Lucia, and the Isle of France and its dependencies, especially Rodrigues and the Seychelles, which several Colonies and possessions His Most Christian Majesty cedes in full right and sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and sovereignty to His Catholic Majesty." And by Article XIII of the said last-named Treaty, that "the French right of fishery upon the Great Bank of Newfoundland upon the coasts of the island of that name, and of the adjacent islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792." And by Article XI of the Treaty of Paris, 1815, that "the Treaty of Paris of the 30th May, 1814, and the Final Act of the Congress of Vienna of the 9th June, 1815, are confirmed, and shall be maintained in all such of their enactments which shall not have been modified by the Articles of the present Treaty."

Now know ye that we, of our special grace, certain knowledge, and mere motion, have given and granted, and by these presents do, for us, our heirs and successors, give and grant unto

in our Island of Newfoundland heirs and assigns, all that piece and parcel of land, situate and being

and being of the dimensions specified in the diagram delineated on the other side hereof, and

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containing with the appurtenances, except and reserved, nevertheless, out of this present grant, to us, our heirs and successors, all gold and silver, and all coals and other mines and minerals in or under the said piece or parcel of land.

To have and to hold (except as before excepted) unto the said heirs and assigns, for ever, the said paying unto us, as the price and consideration of the said land, the sum of dol. c. at the time of the ensealing and delivery hereof.

Provided always, and it is hereby declared that this grant is made upon and subject to the express condition that the said heirs and assigns shall faithfully observe, obey, fulfil, and perform all Rules, Orders, Regulations, and directions whatsoever, which may at any time, and from time to time be made and issued by us, or on our behalf, to declare, control, protect, regulate, or affect the right of the French under any existing or future Treaty, Convention, or Arrangement between Great Britain and France, whether such Rules, Orders, Regulations, or directions relate to the whole of that portion of the coast of our Island of Newfoundland, where the French have rights, for the time being, or to any part of such coast, or to the district or locality in which the land hereby granted is situate, or to any part of such district or locality, or specially to the said land.

Provided also, and it is hereby further declared that this grant is made also upon the express condition that all such Rules, Orders, Regulations, and directions as aforesaid shall be absolutely binding upon the said heirs and assigns, from and after the publication thereof in the Government Gazette of our said island, and that the said heirs and assigns shall not at any time question or dispute the validity or applicability of such Rules, Orders, Regulations, or directions, or any of them.

And we do hereby reserve to ourselves, our heirs and successors, full right by notice in the said Government Gazette or otherwise, to declare the land herein described absolutely forfeited, if at any time the said heirs or assigns have not faithfully fulfilled and performed the aforesaid conditions, or any of them; and at any time thereafter to re-enter and re-possess the said land as if this grant had not been made.

Provided also, and this grant is upon the further conditions that the said lands shall be holden upon, under, and subject to such Regulations as are now in force, or which may at any time hereafter be made by law, for the improvement and cultivation of lands within our said island, and subject to all such Regulations as are now in force, or which may at any time hereafter be made by law, for making roads, sewers, drains, canals, bridges, or other public work or improvement, within our said island, or any part thereof, and for subjecting any lands therein situate, or the owners and occupiers of such lands, to rates and assessments, or other duties or services, for the purposes aforesaid, or for any of them; and that the said heirs and assigns shall, at all times, peaceably quit and deliver up possession to us, our heirs and successors, of all such parts of the land aforesaid as may be required for the purposes aforesaid, or any of them, upon receiving such compensation (if any) as by law now in force, or hereafter to be made, in that respect, may be provided.

Given under the Great Seal of our aforesaid Island of Newfoundland, at St. John's in our said island, this day of in the year of our Lord one thousand eight hundred and , and in the year of our reign.

Witness our trusty and well-beloved , our Governor and Commander-in-chief in and over our said Island of Newfoundland and its dependencies.

By his Excellency's command,

(Signed) ,

Colonial Secretary.

Received the day and year above written, from the within-named grantee, the sum of , amount of consideration money of the land herein granted.

$_____

Registered volume, No. , Folio .

(Signed) ,

Her Majesty's Surveyor-General.

The foregoing is the Form of grant of land in fee proposed. In cases of leases and grants of minerals and licences to search for minerals, also of licences of occupation of land and leases of land, the same recitals and proviso to be inserted.

No. 23.

The Law Officers of the Crown and Dr. Deane to the Earl of Derby.

My Lord, *Royal Courts of Justice, March 3, 1884.*

WE are honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 25th ultimo, stating that a Commission, composed of two British Commissioners and two Commissioners appointed by the Government of France, had been sitting in Paris with a view to the settlement of the Newfoundland Fishery question.

That a paper, of which the inclosed document was a translation, had been handed confidentially to the British Commissioners by the French Commissioners, containing certain proposals for the regulation of the fisheries which were carried on, as we were aware, within the territorial limits of the Island of Newfoundland.

That it did not appear necessary for the purpose of that reference to explain the rights claimed by either nation under the Treaties between the two countries affecting the question, but that your Lordship would be glad to learn whether, in our opinion, if Regulations such as those proposed (which, it might be observed, deal only partially with the whole question involved) should be agreed to by Her Majesty's Government, an Act either of the Imperial Parliament or of the Legislature of Newfoundland would be requisite to carry out the Regulations in question or any portion of them, or whether it would be competent to Her Majesty's Government to agree to an arrangement such as was proposed, and to carry its provisions into effect without any legislation.

That it had been suggested that the proposals made by the French Commissioners should be modified as indicated in the separate paper inclosed, marked (A), and that if that suggestion should be adopted some of the Articles embodied in the proposals of the French Commissioners would have to be omitted and others materially modified.

That Sir R. Herbert was to request that your Lordship might be informed whether, if in our opinion, legislation would be necessary in order to carry out the proposals of the French Memorandum, it would also be necessary if those set out in the paper marked (A) were substituted.

That Sir R. Herbert was desired to inclose a copy of the Parliamentary Paper containing correspondence respecting the Conference at the Hague and the Convention of the 6th May, 1882, relative to the police of the fisheries in the North Sea, on which the French Commissioners' proposals appeared to be generally based. That the enjoyment of the fisheries by the French on the coasts of Newfoundland was secured to them within the territorial waters of the Colony.

That the Treaties bearing upon the subject are quoted in the accompanying Form of land grant.

That Sir R. Herbert was to add that your Lordship would be glad to be favoured with our reply at our very earliest convenience, as the sittings of the Commission at Paris were suspended in the meantime.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to

Report—

That, in our opinion, neither the original proposal, nor the suggested modification of it, could be carried into effect in its entirety without legislation.

If an agreement were come to with France of the nature proposed, it would be necessary to obtain legislative sanction for the powers and jurisdiction proposed to be conferred on French vessels of war within territorial waters.

We think that legislation in Newfoundland would be necessary; though we are not prepared to say that the object might not be effected by Imperial legislation, yet, seeing that Newfoundland possesses an independent Legislature, the attempt to deal with such a matter by Imperial legislation alone would give rise to grave Constitutional questions between this country and the Colony.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

Annex 1.

Resolutions suggested (informally) by the French Commissioners.

LES Commissaires soussignés, délégués par les Gouvernements de France et d'Angleterre, à l'effet de rechercher, en dehors des Traités actuellement en vigueur, qu'ils n'avaient mission ni de modifier ni d'interpréter les moyens de prévenir et de régler les contestations relatives à l'exercice de la pêche sur les côtes de Terre-Neuve, ont arrêté, d'un commun accord, pour être soumises à l'approbation de leurs Gouvernements respectifs, les dispositions suivantes, qui ont uniquement pour objet de fixer,

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sous réserve de tout droit de juridiction, le mode de surveillance à exercer par les croiseurs des deux pays.

Article 1er. Les navires ou bateaux Français et Anglais seront enregistrés, suivant les règlements administratifs du pays auquel ils appartiennent.

Ils devront porter, d'une manière visible et apparente, soit leur nom et celui de leur port d'attache, soit toute autre marque permettant de constater facilement à distance leur identité.

Art. 2. Le capitaine, maître, ou patron du navire ou bateau sera porteur d'une pièce officielle, dressée par les autorités compétentes de son pays, qui lui permette de justifier de sa nationalité.

Ce document devra indiquer le nom ou la marque du dit navire ou bateau, ainsi que son port d'attache, le nom du capitaine, maître, ou patron, et le nom ou les noms ou la raison sociale du propriétaire.

Art. 3. Il est interdit de dissimuler, par un moyen quelconque, la nationalité du navire ou bateau.

Art. 4. Tout bateau de pêche, tout canot, tout objet d'armement ou de gréement de bateau de pêche, tout filet, ligne, bouée, ou engin quelconque, qui aura été trouvé ou recueilli, devra, aussitôt que possible, être remis aux autorités compétentes de la nation du sauveteur.

Les objets sauvés seront rendus aux propriétaires, ou à leurs représentants, par les soins des dites autorités compétentes et sous réserve de la garantie préalable des droits du sauveteur.

L'indemnité à payer aux sauveteurs sera fixée suivant la législation de leurs pays.

Art. 5. La surveillance de la pêche sera exercée par des bâtiments de la marine militaire des deux pays, en se conformant aux Traités actuellement en vigueur.

Art. 6. L'exécution des règles qui concernent le document justificatif de la nationalité des navires ou bateaux, ainsi que les marques servant à constater leur identité, est placée sous la surveillance exclusive des bâtiments croiseurs de la nation à laquelle appartiennent les dits navires ou bateaux.

Toutefois, les Commandants des bâtiments croiseurs se signaleront mutuellement les infractions aux dites règles commises par les navires ou bateaux de l'autre nation.

Art. 7. Les bâtiments croiseurs des deux pays seront compétents pour prévenir et constater toutes les infractions aux Traités actuellement en vigueur, et notamment à la Déclaration de 1783, aux termes de laquelle "les sujets Britanniques ne doivent troubler en aucune manière, par leur concurrence, la pêche des Français pendant l'exercice temporaire qui leur est accordé sur les côtes de Terre-Neuve."

Art. 8. Lorsque les Commandants des bâtiments croiseurs le jugent nécessaire, ils peuvent exiger la production de la pièce officielle justifiant la nationalité du navire ou bateau.

Ils ne peuvent pousser plus loin leur visite ou leur recherche à bord d'un navire ou bateau qui n'appartient pas à leur nationalité, à moins qu'ils ne le jugent indispensable pour relever les preuves d'un délit ou d'une contravention qu'ils auraient à constater.

Art. 9. Les Commandants des bâtiments croiseurs des deux pays apprécient la gravité des faits parvenus à leur connaissance et constatent le dommage, quelle qu'en soit la cause, éprouvé par la partie plaignante.

Ils dressent, s'il y a lieu, procès-verbal de la constatation des faits, telle qu'elle résulte tant des déclarations des parties intéressées que des témoignages recueillis.

Si le cas lui semble assez grave pour justifier cette mesure, le Commandant d'un bâtiment croiseur aura le droit de s'assurer soit des personnes, soit du navire ou bateau en contravention, pour les remettre entre les mains des autorités Françaises si le dit navire ou bateau est Français, ou des autorités Anglaises dans tout autre cas.

Art. 10. Le procès-verbal prévu à l'Article précédent est rédigé dans la langue du Commandant du bâtiment croiseur et suivant les formes usitées dans son pays.

Les inculpés et les témoins auront le droit d'y ajouter ou d'y faire ajouter, dans leur propre langue, toute mention ou témoignage qu'ils croiront utile. Ces déclarations devront être dûment signées.

Art. 11. La résistance aux prescriptions ou injonctions des Commandants des bâtiments croiseurs chargés de la police de la pêche, ou de ceux qui agissent d'après leurs ordres, sera, sans tenir compte de la nationalité du croiseur, considéré comme résistance envers l'autorité compétente pour réprimer le fait incriminé.

Art. 12. Lorsque le fait incriminé ne sera pas de nature grave, mais que néanmoins il aura occasionné des dommages, les Commandants des bâtiments croiseurs pourront concilier les intéressés et fixer l'indemnité à payer, s'il y a consentement des parties en cause.

Dans ce cas, si l'une des parties n'est pas en mesure de s'acquitter immédiatement, les Commandants feront signer en double expédition par les intéressés un acte réglant l'indemnité à payer. Un exemplaire de cette pièce restera à bord du croiseur; l'autre sera remis à la partie en crédit, afin qu'elle puisse, au besoin, s'en servir devant les Tribunaux du débiteur.

Dans le cas, au contraire, où il n'y aurait pas consentement des parties, les Commandants agiront conformément aux dispositions de l'Article 9.

Art. 13. La poursuite des délits et contraventions prévus par le présent règlement de police aura lieu au nom de ou par l'État.

Art. 14. Les mesures nécessaires seront prises par les deux Gouvernements pour assurer l'exécution du présent règlement de police, en faisant punir soit de l'emprisonnement, soit de l'amende, soit de ces deux peines, ceux qui contreviendraient aux dispositions du dit règlement ou aux Traités actuellement en vigueur.

Art. 15. Toutes les fois qu'il y aura eu soit des voies de fait, soit des dommages ou des pertes volontairement causés, les Tribunaux Français seront compétents pour juger les délinquants faisant partie d'un équipage Français, et les Tribunaux Anglais dans tous les autres cas.

La même règle est applicable en ce qui concerne les délits et contraventions prévus par le présent règlement de police.

Art. 16. La procédure et le jugement des contraventions aux dispositions du présent règlement de police auront toujours lieu aussi sommairement que les Lois et Règlements le permettent.

Art. 17. Les dispositions du présent règlement de police sont applicables aux pêcheurs des deux pays, dans la mer commune, et aux pêcheurs de toute nationalité, dans les eaux territoriales qui baignent la partie des côtes de l'Ile de Terre-Neuve et dépendances dont l'usage temporaire pour l'exercice du droit de pêche est reconnu aux Français par les Traités actuellement en vigueur.

Elles sont applicables uniquement pendant le temps durant lequel les Traités accordent aux Français le droit de pêcher et de sécher le poisson.

(Translation.)

The undersigned Commissioners, who have been appointed by the French and English Governments to endeavour to arrive at a means (without alienating or conceding the rights of either Government under existing Treaties, which it is not their duty either to modify or to interpret) of preventing and adjusting disputes relative to the exercise of the fishing on the coast of Newfoundland, have framed in concert the following regulations, subject to the approval of their respective Governments, with the sole object, under reservation, of all right of jurisdiction, of determining a mode of supervision to be exercised by the cruizers of the two countries:—

Article 1. French and English ships and boats shall be registered in accordance with the administrative regulations of each country. They shall bear their name and letters of the port to which they belong in a visible manner, or any other mark which will allow of their being easily recognized at a distance.

Art. 2. The captain, master, or patron of the ship or boat must have with him an official document issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat.

This document must give the name or the letter of the ship or boat as well as of the port to which they belong, the name of the captain, master, or patron, and the name or names of the firm or Association to which they belong.

Art. 3. The nationality of a ship or boat must not be concealed in any manner whatsoever.

Art. 4. All fishing-boats, all their small boats, all rigging, gear, or other appurtenances of fishing-boats, all nets, lines, buoys, floats, or other fishing implements whatsoever, found or picked up, shall, as soon as possible, be delivered to the competent authorities of the nation of the salvor.

The articles saved shall be restored to the owners thereof, or to their representatives, by means of the above-mentioned competent authorities, and the interest of the salvors shall be properly guaranteed, the amount which the owners shall pay to the salvors, according to the legislation of the respective countries in such matters.

Art. 5. The superintendence of the fisheries shall be exercised by vessels belonging to the national navies, which will act in conformity with the stipulations of the Treaties at present in force.

Art. 6. The execution of the regulations respecting the document establishing nationality, the marking out and numbering of boats, is placed under the exclusive superintendence of the cruizers of the nation of each ship or boat. Nevertheless, the Commanders of cruizers shall acquaint each other with any infractions of the above regulations committed by the ships or boats of the other nation.

Art. 7. The cruizers of the two countries shall be competent to prevent and authenticate all infractions of the Treaties actually in force, and especially of the Declaration of 1783, according to the terms of which British fishermen should be prevented "from interrupting in any manner by their competition the fishery of the French, during the temporary exercise of it, which is granted to them upon the coast of the Island of Newfoundland."

Art. 8. When the Commanders of cruizers may consider it necessary they may require the production of the official document establishing the nationality of the ship or boat.

They shall not pursue further their visit or search on board the ship or boat which is not of their own nationality, unless they should consider it necessary for the purpose of obtaining proof of an offence or of a contravention which they have to authenticate.

Art. 9. The Commanders of the cruizers of the two countries shall exercise their judgment as to the gravity of facts brought to their knowledge, and verify the damage, from whatever cause arising, which may be sustained by the complaining party.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts, as elicited both from the declarations of the parties interested and from the testimony of those present.

The Commander of the cruizer may, if the case appears to him sufficiently serious to justify the step, arrest either the persons or the ship or boat offending, in order to give them up into the hands of the French authorities if the ship or boat be French, or into the hands of the English authorities in all other cases.

Art. 10. The formal statement referred to in the preceding Article shall be drawn up in the language of the Commander of the cruizer, and according to the forms in use in his country.

The accused and the witnesses shall be entitled to add or to have added, in their own language, any observations or evidence which they may think suitable; such declarations must be duly signed.

Art. 11. Resistance to the directions or injunctions of Commanders of cruizers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruizer, be considered as resistance to the competent authority for repressing the act complained of.

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Art. 12. When the act alleged is not of a serious character, but has, nevertheless, caused damage, the Commanders of cruizers shall be at liberty, should the parties concerned agree to it, to arbitrate between them, and to fix the compensation to be paid.

When one of the parties is not in a position to settle the matter at once, the Commanders shall cause the parties concerned to sign, in duplicate, a formal document specifying the compensation to be paid. One copy of this document shall remain on board the cruizer, and the other shall be handed to the person to whom the compensation is due, in order that he may, if necessary, be able to make use of it before the Courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the Commanders shall act in accordance with the provisions of Article 9.

Art. 13. The prosecutions for offences against or contraventions of the present police regulations shall be instituted by and in the name of the State.

Art. 14. The necessary measures will be taken by the two Governments for insuring the execution of the present police regulations for the punishment by either imprisonment or fine, or by both, of persons who may contravene the provisions of the regulations or the existing Treaties.

Art. 15. In all cases of assault committed, or of wilful damage or loss inflicted, the Courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rules shall apply with regard to offences against and contraventions of the present Convention.

Art. 16. The proceedings and trial in cases of infraction of the provisions of the present police regulations shall take place as summarily as the Laws and Regulations will permit.

Art. 17. The provisions of the present police regulations shall be applicable to the fishermen of the two countries on the high seas, and to the fishermen of any other nationality in the territorial waters on that part of the coast of the Island of Newfoundland and its dependencies on which a temporary use, for fishing purposes, is accorded to French citizens in accordance with Treaty stipulations.

These provisions shall only be applicable during the period which the Treaties accord to the French for carrying on their fisheries and drying their fish.

Annex 2.

Suggestions for certain Proposals which might be made by the British Commissioners in Conference.

(A.)

THE superintendence of the fisheries shall be exercised by vessels belonging to Great Britain with steam-launches acting under their orders stationed at such ports of the coast as may be agreed upon. With a view to facilitating their presence with the least possible delay at any given spot where their services might be specially required, means will be taken, by the establishment of telegraphic communication between the places where the steam-launches will be stationed, to secure that end.

Her Majesty's Government will have no objections to the vessels belonging to the Republic of France exercising superintendence in those territorial waters of Newfoundland where the French have a right of fishery over fishermen belonging to their own nationality, and if French fishermen are *bonâ fide* interrupted in their fishing operations by British fishermen, it shall be competent to the Commanders of the French cruizers to order them to remove to a sufficient distance to prevent interruption, but what shall constitute an interruption with which the French shall be empowered to exercise the above function is defined in Article .*

In the event of a British vessel or boat declining to obey the order, a representation shall be made by the French naval officer to the Commander of the nearest vessel or steam-launch belonging to Her Majesty, whose duty it will be to investigate the matter immediately, and if there has been any interruption to the French fishery coming within the terms of the Article,* the offender or offenders shall be detained, and the case further investigated in the presence of a French officer, and the offender adequately punished according to rules to be agreed upon in reference to the nature of the offence.

In cases of assault, or aggravated offences, it shall be competent to the French naval officers to detain the ship or boat of the offending party, and to hand them over to the British authorities to be dealt with as in the preceding Article.

(B.)

All necessary measures shall be taken to prevent French citizens from being interrupted or impeded in the prosecution of the sea fisheries, in accordance with wording to the British Declaration of 1783, and in the enjoyment of their priority in respect thereof. What shall constitute an interruption to French fisheries shall be decided, having regard to the following questions of fact:—

1. Are French fishermen present, and desirous to fish?
2. Are they incommoded, or likely to be incommoded, by the British fishermen?

* See *infra*, marked (B).

If the above questions are decided in the affirmative, the British fishermen shall be ordered to withdraw, but if there be room for the British fishermen at the time and place to fish without incommoding the French, they shall not be interfered with.

No. 24.

The Law Officers of the Crown and Dr. Deane to the Earl of Derby.

Royal Courts of Justice, March 7, 1884.

My Lord,

WE are honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 4th instant, stating that with reference to our report of the 3rd instant* on the subject of the proposed Agreement between the Governments of Great Britain and France to regulate the exercise of the French fishing rights on the coast of Newfoundland, he was directed by your Lordship to request our opinion on the following question:—

That it was apprehended that great opposition would be made in the Colony of Newfoundland to the passing of those measures which, according to our report, would be required to give effect to the proposed Agreement.

That it would therefore be very desirable, if possible, to arrive at some arrangement which would obviate the necessity of legislation. That it was proposed to limit the powers of the French cruizers employed to watch the French fisheries to warning off British fishing boats improperly interfering with the French fishermen in the exercise of their Treaty rights, and, in case of persistence in such interference, to forcibly detaining them until the arrival of the British authorities. That in the case of Buron *v.* Denman (2 Exch., 167) it was held that the seizure of a foreign vessel by a British man-of-war, having been approved by Her Majesty's Government, had become an act of State, and that the private right of action to which the seizure might have given rise was merged in the international question between the two Governments. (See observations on that case in Feathers *v.* The Queen, 12 L.T. Rep. U.S., p. 113.)

That the question had arisen whether the Commander of a French cruizer acting under instructions from Her Majesty's Government in the exercise of the powers above mentioned would be free from legal liability on account of such acts, on the principle which governed the case of Buron *v.* Denman.

That it was urgently requested that a reply might be given on the above point, with the least possible delay, for the same reason as that mentioned in Sir R. Herbert's letter of the 25th ultimo.

In obedience to your Lordship's commands we have the honour to

Report—

That we doubt whether the decision in Buron *v.* Denman, which applied to the case of an officer in Her Majesty's service acting on her behalf, would be extended to a case as that suggested. But in any view we think it would be beyond the constitutional powers of the Sovereign to authorize the captain of a foreign vessel to exercise by force acts of authority within the territorial waters without Parliamentary sanction.

We have, &c.

(Signed) HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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* No. 23.

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No. 25.

The Law Officers of the Crown to the Earl of Derby.

Royal Courts of Justice, April 4, 1884.

My Lord

WE were honoured with your Lordship's commands signified in Sir Robert Herbert's letter of the 1st instant, stating that with reference to our reports of the 3rd and 7th March last* relating to a scheme which had been proposed for a settlement of the Newfoundland Fishery question, he was directed by your Lordship to transmit to us a copy, together with a translation, of a Project of Arrangement which had been drawn up at Paris by the British and French Commissioners, and which had then been submitted for the consideration of Her Majesty's Government.

2. That it would be observed that Article 19, which was inserted at the instance of the French Commissioners, contemplated that that Arrangement, if agreed to, should come immediately into force with the exception of certain Articles, the application of which would be dependent upon the adoption by the Legislature of Newfoundland of the Acts requisite for the carrying of them into effect.

3. That Her Majesty's Government entertained doubts as to whether it would be advisable that such a course should in any case be adopted, and that it seemed probable that other Articles would require legislation to bring them into operation besides those numbered 4, 5, and 14, which were referred to in the above-mentioned 19th Article.

That, on the other hand, until the provisions contained in Articles 4, 5, and 14 were brought into operation, the French Government would be unwilling that the first part of Article 2 should take effect.

4. That your Lordship would be obliged if we would inform you which of the Articles would, in our opinion, require legislative action on the part of the Legislature of Newfoundland to bring them into operation, and which of them might take effect immediately without such legislation, should Her Majesty's Government think it desirable that such a course should be taken.

5. That your Lordship would also be obliged if we would favour you with any observations which might occur to us on the wording of the Articles generally. That your Lordship desired Sir Robert Herbert to request that we would be so good as to give the matter our earliest possible attention, and favour you with our opinion, if practicable, in the course of the present week, as one of the French Commissioners was obliged to leave Paris very shortly to take up his naval command on the Newfoundland Fishery Station, and that Her Majesty's Government were most desirous that the British Commissioners who were then in London should return to Paris without delay.

In obedience to your Lordship's commands we have the honour to

Report—

That, in our opinion, Legislative action would certainly be required to bring into operation Articles 4, 7, 9, 11, 14, and 15.

We think legislation would probably be requisite to give effect to other Articles; but this depends upon matters as to which we have no information. We will call attention to the questions which arise upon these Articles in submitting, as requested, the following criticisms upon the wording of the draft of Arrangement.

Article 2, paragraph 3. We do not altogether understand what "establishments" are referred to, whether fishing establishments or others; nor what is the meaning of the coast between Cape St. John and Cape Ray "passing by the north." It may be, however, that to those possessing local knowledge there would be no obscurity.

Article 8. We do not understand whether the last paragraph of this Article has reference to "Magisterial functions" already possessed, or proposes that such functions shall be conferred. If the latter, legislation would, of course, be necessary; and in any case, legislation would seem to be required to make the report admissible in evidence.

Article 9. We would suggest that in the second paragraph the words "as well" should be substituted for "as much." It reads at present as though as much weight were necessarily to be attributed to the declarations of the interested parties as to the evidence. We presume this is not the meaning of the French draft.

* Nos. 23 and 24.

Article 10. We presume that this is intended to confer some new powers of administering justice. If so, legislation will be requisite.

Article 16. Does this make lawful what is now unlawful? If so, legislation will be required.

Article 18. We do not understand the meaning of the exception of all the provisions of Articles 1 and 2. Some of these would seem to be inapplicable except for the time during which the Treaties accord to the French the right of fishing, and drying their fish.

We have, &c.
(Signed) HENRY JAMES.
FARRER HERSCHELL.

Annex.

Draft Agreement.

Definitive Text embodying Alterations made in Red Ink on French Version, as shown in Inclosure to Messrs. Ford and Pennell's Report of March 26, 1884.*

LES Commissaires soussignés, délégués par les Gouvernements de France et d'Angleterre, à l'effet de rechercher, en dehors des Traités actuellement en vigueur, qu'ils n'avaient mission ni de modifier ni d'interpréter, les moyens de prévenir et de régler les contestations relatives à l'exercice de la pêche, sur les côtes de Terre-Neuve, ont arrêté d'un commun accord, sous réserve de l'approbation de leurs Gouvernements respectifs, les dispositions suivantes:—

Article 1. Le Gouvernement de Sa Majesté la Reine du Royaume-Uni de Grande-Bretagne et d'Irlande s'engage à se conformer aux dispositions ci-après pour assurer aux pêcheurs Français, en exécution des Traités en vigueur et particulièrement de la Déclaration de 1783, le libre exercice de leur industrie sur les côtes de Terre-Neuve, sans gêne ou obstacle quelconque de la part des sujets Britanniques.

Art. 2. Le Gouvernement de la République Française s'engage, de son côté, en échange de la sécurité accordée aux pêcheurs Français par l'application des dispositions contenues dans le présent Arrangement, à n'élever aucune protestation contre la création des établissements nécessaires au développement de toute industrie autre que celle des pêcheries, sur les parties de la côte de Terre-Neuve comprise entre le Cap Saint-Jean et le Cap Raye, qui sont indiquées et délimitées dans l'état ci-annexé et teintées en rouge sur la Carte également ci-annexée.

Il est entendu que les Français conserveront, dans sa plénitude sur ces parties de la côte, et tel qu'il est défini par les Traités, le droit de pêcher, sécher, préparer le poisson, &c., ainsi que celui de couper, partout ailleurs que dans les propriétés closes, le bois nécessaire pour leurs échafaudages, cabanes, et bâtiments de pêche.

Le Gouvernement Français s'engage, de son côté, à ne pas inquiéter les sujets Anglais résidents, à l'égard des constructions actuellement établies sur le littoral compris entre le Cap Saint-Jean et le Cap Raye, en passant par le nord. Mais il n'en sera point établi de nouvelle sur les parties du littoral non mentionnées au premier paragraphe du présent Article.

Art. 3. La surveillance et la police de la pêche seront exercées par les bâtiments de la marine militaire des deux pays, dans les conditions ci-après déterminées, les Commandants des croiseurs ayant seuls, dans ces conditions, autorité et compétence dans toutes les affaires concernant la pêche et les opérations qui en sont la conséquence.

Art. 4. Les navires ou bateaux de pêche Français et Anglais seront enregistrés, suivant les règlements administratifs du pays auquel ils appartiennent et devront porter, d'une manière apparente, des marques distinctives permettant de constater à distance leur identité.

Les capitaines, maîtres, ou patrons seront porteurs de documents justificatifs de la nationalité de leurs navires ou bateaux.

Art. 5. Les Commandants des bâtiments croiseurs se signaleront mutuellement les infractions aux règles établies par l'Article précédent, qui seraient commises par les navires ou bateaux de l'autre nation.

Art. 6. Les bâtiments croiseurs des deux pays seront compétents pour constater toutes les infractions aux Traités actuellement en vigueur, et notamment à la Déclaration de 1783, aux termes de laquelle les sujets Britanniques ne doivent "troubler, en aucune manière, par leur concurrence, la pêche des Français pendant l'exercice temporaire qui leur est accordé sur les côtes de Terre-Neuve."

Art. 7. Sur la plainte des pêcheurs Français ou sur leur demande tendant à pouvoir user de leur droit de pêche, les Commandants des bâtiments croiseurs Anglais s'opposeront et, s'il n'y a aucun croiseur Anglais en vue, les Commandants des bâtiments croiseurs Français pourront s'opposer à toute opération de pêche des sujets Britauniques qui gênerait l'industrie des dits pêcheurs Français, et éloigner les bateaux ou navires qui seraient un obstacle à cette industrie.

A cet effet, les Commandants des bâtiments croiseurs Français pourront adresser à la partie en cause les injonctions nécessaires et prendre, en cas de résistance, les engins de pêche pour les déposer à terre ou les remettre entre les mains des Commandants des croiseurs de Sa Majesté Britannique.

* In *italic*.

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Dans le cas où il n'en résulterait aucune gêne pour les pêcheurs Français, et où il n'y aurait ni plainte ni demande de leur part tendant à pouvoir user, sans difficultés, de leur droit de pêche, les Commandants des croiseurs Français ne s'opposeront pas à l'exercice de la pêche par les sujets Britanniques.

Art. 8. Dans le cas où des résidents gêneraient ou troubleraient, à terre, par leurs actes, le séchage et la préparation du poisson et, en général, les diverses opérations qui sont la conséquence de l'exercice de la pêche Française sur la côte de Terre-Neuve, un procès-verbal de constatation du dommage causé sera dressé par les Commandants des bâtiments croiseurs de Sa Majesté Britannique et, en leur absence, par les Commandants des croiseurs Français.

Dans ce dernier cas, le procès-verbal fera foi, pour la justice à rendre, en leur qualité de Magistrats, par les Commandants des croiseurs de Sa Majesté Britannique.

Art. 9. Si un délit est commis ou un dommage causé, les Commandants des bâtiments croiseurs de la nationalité du délinquant et, en leur absence, les Commandants des bâtiments croiseurs de la nationalité du plaignant apprécieront la gravité des faits parvenus a leur connaissance et constateront le dommage éprouvé par la partie plaignante.

Ils dresseront, s'il y a lieu, et suivant les formes usitées dans leur pays, procès-verbal de la constatation des faits, telle qu'elle résultera, tant des déclarations des parties intéressées que des témoignages recueillis.

Ce procès-verbal fera foi, pour la justice à rendre, dans les limites de leur compétence, par les Commandants des croiseurs de la nationalité du délinquant.

Si le cas lui semble assez grave pour justifier cette mesure, le Commandant du bâtiment croiseur de la nationalité du plaignant aura le droit, s'il n'y a en vue aucun croiseur de la nationalité du délinquant, de s'assurer soit de la personne du dit délinquant, soit de son bateau, pour les remettre entre les mains des Commandants des bâtiments croiseurs de leur nationalité.

Art. 10. Les Commandants des bâtiments croiseurs Anglais et Français devront, dans la limite de leur compétence, faire droit, d'urgence, aux plaintes dont ils seront saisis, soit directement par la partie intéressée, soit par l'entremise des Commandants des croiseurs de l'autre nation.

Art. 11. La résistance aux prescriptions ou injonctions des Commandants des bâtiments croiseurs chargés de la police de la pêche ou de ceux qui agissent d'après leurs ordres, sera, sans tenir compte de la nationalité du croiseur, considérée comme résistance envers l'autorité compétente pour réprimer le fait incriminé.

Art. 12. Lorsque le fait incriminé ne sera pas de nature grave, mais que néanmoins il aura occasionné des dommages, les Commandants des bâtiments croiseurs pourront concilier les intéressés et fixer l'indemnité à payer, s'il y a consentement des parties en cause.

Art. 13. Le Gouvernement Français renonce, pour ses nationaux, à la pêche du saumon dans le cours d'eau et ne se réserve la pêche de ce poisson qu'en mer et à l'embouchure des rivières, jusqu'au point où les eaux sont salées, mais il est interdit d'établir des barrages fixes pouvant empêcher la navigation intérieure ou la circulation du poisson.

Art. 14. Les pêcheurs Français seront exempts de toute taxe pour l'introduction dans la partie de l'Ile de Terre-Neuve comprise entre le Cap Saint-Jean et le Cap Raye, en passant par le nord, de tous objets, matières, vivres, &c., nécessaires à leur industrie, à leur subsistance, et à leur établissement temporaire sur la côte de cette possession Britannique.

Ils seront également, dans cette même partie de l'île, affranchis de tout droit de phare, de port, ou autre droit de navigation.

Art. 15. Les pêcheurs Français auront le droit d'acheter la boitte, hareng et capelan, à terre ou à la mer, dans les parages de Terre-Neuve, sans droits ni entraves quelconques, postérieurement au 5e jour d'Avril de chaque année, et jusqu'à la fin de la saison de pêche.

Art. 16. L'emploi de sujets Français, à raison d'une famille par établissement, est autorisé pour la garde des emplacements Français, en dehors de la saison de pêche.

Art. 17. Tout bateau de pêche, tout canot, tout objet d'armement ou de gréement de bateau à pêche, tout filet, ligne, bouée ou engin quelconque qui aura été trouvé ou recueilli, devra, aussitôt que possible, être remis aux autorités compétentes de la nation du sauveteur.

Les objets sauvés seront rendus aux propriétaires ou à leurs représentants par les soins des dites autorités compétentes, et sous réserve de la garantie préalable des droits des sauveteurs.

L'indemnité à payer aux sanveteurs sera fixée suivant la législation de leur pays.

Art. 18. Les dispositions du présent Arrangement, à l'exception de celles des Articles 1 et 2, seront applicables uniquement pendant le temps durant lequel les Traités accordent aux Français le droit de pêcher et de sécher le poisson.

Art. 19. Le présent Arrangement entrera immédiatement en vigueur, à l'exception des Articles 2, 4, 5, et 14, dont l'application est subordonnée, en tant que de besoin, à l'adoption par la Législature de Terre-Neuve des Actes nécessaires pour leur mise à exécution.

(Translation.)

The undersigned Commissioners, who have been appointed by the French and English Governments to endeavour to arrive at a means, without touching the Treaties at present in force, which it is not their duty either to modify or to interpret, of preventing and regulating disputes relative to the exercise of the fishery on the coasts of Newfoundland, have framed in concert the following regulations, subject to the approval of their respective Governments:—

Article 1. The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engages to comply with the following regulations relating to the measures for securing to French fishermen, in execution of the Treaties in force, and particularly of the Declaration of 1783,

the free exercise of their industry on the coasts of Newfoundland without any interference or obstruction whatever on the part of British subjects.

Art. 2. The Government of the Republic of France engages, on its part, in exchange for the security accorded to French fishermen by the application of the regulations contained in the present Arrangement, not to raise any objections against the creation of establishments necessary for the development of every industry other than that of the fisheries on the portions of the coast of Newfoundland, comprised between Cape St. John and Cape Ray, which are indicated and defined in the accompanying Statement, and are tinted in red on the Map, which is likewise annexed hereto.

It is understood that French citizens shall retain in full on those parts of the coast the right as it is defined by Treaty of fishing, of drying and curing their fish, &c., as well as of cutting wood in all parts, except on inclosed property necessary for their fishing-stages, huts, and fishing-boats.

The French Government engages, on its part, not to disturb the resident British subjects with regard to the establishments actually existing on those parts of the coast comprised between Cape St. John and Cape Ray, passing by the north; but no new ones will be established on those parts of the coast not mentioned in the first paragraph of this Article.

Art. 3. The superintendence and the police of the fisheries shall be exercised by the ships of war of the two countries, in accordance with the conditions hereafter set forth, the Commanders of these ships having sole authority and competency under these conditions in all matters relating to the fisheries, and the operations which result therefrom.

Art. 4. French and English fishing-ships or boats shall be registered in accordance with the administrative regulations of the country to which they respectively belong, they shall bear distinctive marks in a visible manner, which will allow of their being easily recognized at a distance. The captains, masters, or persons in charge must have with them documents establishing the nationality of their ships or boats.

Art. 5. The Commanders of cruizers of each nation shall notify mutually to one another any infractions, which may be committed by the ships or boats of the other nation, of the Regulations set forth in the preceding Article.

Art. 6. The Commanders of the cruizers of the two countries shall have authority to record all infractions of the Treaties actually in force, and especially of the Declaration of 1783, according to the terms of which British subjects are not to "interrupt in any manner the fishery of the French by their competition during the temporary exercise of it which is granted to them upon the coasts of Newfoundland."

Art. 7. On a complaint being made by French fishermen, or on a demand being made by them with a view to their being enabled to exercise their right of fishing, the Commanders of the English cruizers shall oppose, or in case of no English cruizer being in sight, the Commanders of the French cruizers may oppose every fishing operation of British subjects which may interrupt the industry of such French fishermen, and may remove the boats or ships causing the obstruction to such industry.

With this object the Commanders of French cruizers may address to the offending parties the necessary warnings, and, in case of resistance, take their fishing implements in order to place them on shore, or to give them up into the hands of the Commanders of Her Britannic Majesty's cruizers.

In cases in which no interruption shall result to French fishermen, and in which neither a complaint nor a demand has been made to enable them to exercise without difficulty their right of fishing, the Commanders of French cruizers will not oppose the fishing operations of British subjects.

Art. 8. In cases in which residents on shore may interfere with or disturb by their acts the drying and the preparation of fish, and in general the various operations which are a consequence of the exercise of the French fishery on the coast of Newfoundland, a Report verifying the damage caused will be drawn up by the Commanders of the cruizers of Her Britannic Majesty, and, in their absence, by the Commanders of the French cruizers.

In the latter case the Report shall be admitted in evidence in the judicial proceedings to be taken thereon by the Commanders of Her Majesty's cruizers in the exercise of their Magisterial functions.

Art. 9. If an offence is committed or damage caused, the Commanders of cruizers of the nationality to which the offender belongs, and, in their absence, the Commanders of the cruizers of the nationality to which the plaintiff belongs, shall estimate the gravity of the facts brought to their knowledge, and shall record the damage sustained by the plaintiff.

They shall draw up, should occasion require it, in accordance with the forms in use in the countries of the two nations respectively, a Report as to the verification of the facts, whatever they may be, having regard as much to the declarations of the interested parties as to the evidence taken in the matter. This Report shall be admitted in evidence in the judicial proceedings to be taken thereon so far as their powers extend by the Commanders of cruizers of the nationality to which the offending party belongs.

Should the matter appear to be of sufficient gravity to justify such a step, the Commander of the cruizer of the nationality to which the plaintiff belongs shall have the right, if no cruizer of the nationality to which the offender belongs be in sight, to secure either the person of the offender or his boat, in order to give them up into the hands of the Commanders of the cruizers of the nationality to which they belong.

Art. 10. The Commanders of British and French cruizers shall administer justice within the limits of their powers at once with regard to the complaints brought to their notice either by the interested parties directly, or through the Commanders of the cruizers of the other nation.

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Art. 11. Resistance to the directions or injunctions of Commanders of cruizers charged with the police of the fisheries, or of those who act under their orders shall, without taking into account the nationality of the cruizer, be considered as resistance to the competent authority for repressing the act complained of.

Art. 12. When the act alleged is not of a serious character, but has nevertheless caused damage, the Commanders of cruizers shall be at liberty, should the parties concerned agree to it, to arbitrate between them, and to fix the compensation to be paid.

Art. 13. The French Government abandons for its subjects the salmon fisheries in rivers, and only reserves a right to the salmon fishery in the sea and at the mouths of rivers up to the point where the water remains salt, but it is forbidden to place fixed barriers which might impede interior navigation or the circulation of the fish.

Art. 14. French fishermen shall be exempt from the payment of any duties on the importation into that part of the Island of Newfoundland comprised between Cape St. John and Cape Raye passing by the north, of all articles, goods, provisions, &c., which are necessary for the prosecution of their fishing industry, for their subsistence, and for their temporary establishment on the coast of this British possession.

They shall also be exempt on the same part of the coast from the payment of all light and port dues, and other shipping dues.

Art. 15. French fishermen shall have the right to purchase bait, both herring and capelin, on shore or at sea, on the shores of Newfoundland, free from all duty or restrictions, subsequent to the 5th April in each year, and up to the close of the fishing season.

Art. 16. The employment of French subjects is authorized to the extent of one family to each establishment to act as guardians of the French establishments after the fishing season.

Art. 17. All fishing-boats, all their small boats, all rigging, gear, nets, lines, buoys, or other fishing implements whatsoever, found or picked up, shall as soon as possible be delivered to the competent authorities of the nation of the salvor.

The articles saved shall be restored to the owners thereof or to their representatives by means of the above-mentioned competent authorities, the interests of the salvors being previously guaranteed.

The indemnity to be paid to the salvors shall be fixed in accordance with the law of the respective countries in such matters.

Art. 18. The provisions of this present Arrangement, with the exception of those contained in Articles 1 and 2, shall only be applicable for the time during which the Treaties accord to the French the right of fishing and drying their fish.

Art. 19. The present Arrangement shall come immediately into force, with the exception of Articles 2, 4, 5, and 14, the application of which is dependent so far as necessary upon the adoption by the Legislature of Newfoundland of the Acts requisite for the carrying of them into execution.

No. 26.

The Law Officers of the Crown to Sir H. Holland.

Sir, *Royal Courts of Justice, November* 10, 1887.

WE were honoured with Mr. Meade's letter of the 12th August last, stating that he was directed by you to inform us that a question had arisen in Newfoundland as to the use by certain British subjects, in the sea, within 3 miles of the coast, of certain fishing engines called "cod traps," which might be taken to monopolize the fishing-ground where they were placed, and thus seriously interfere with the fishing operations of other persons both French and British.

That we were aware that the French had certain rights of fishing off the coast of Newfoundland, under Treaties which were set out in the first three pages of the accompanying Blue Book, C.—4641, and that the French Government had made formal complaint of the use of those engines, which, it was admitted, were not the method of carrying on the fishing at the date of the Declaration of 1783.

That certain British subjects had also established factories on the shores of Newfoundland, within the limits of the French fishery, for the purpose of preserving lobsters; and that the French Government demanded that those factories should be suppressed as being an infraction of the Treaties above referred to, and called upon Her Majesty's Government to cause them to be removed as being "fixed settlements."

That the Newfoundland Government had not taken, and, it was apprehended, might not be prepared to take, legislative or executive action, either for the removal of the lobster factories or for the prohibition of the use of cod traps on the coast in question, and that Mr. Meade was to request that you might be informed whether, in our opinion, assuming for present purposes that (*a*) cod traps, (*b*) lobster factories, were contrary to Treaties with France, Her Majesty's Government had the Constitutional right to act within Newfoundland, which was a self-governing Colony, for carrying out such Treaties, and might legally take measures for (1) the forcible removal of cod traps and their confiscation, (2) the compulsory closing of the lobster factories;

and further, whether the Colonial Government might lawfully, without express legislative power, which did not exist, take measures for the forcible removal of cod traps within Colonial waters, and their confiscation, or for the compulsory closing of the lobster factories.

That Mr. Meade was to add that you would feel obliged for any advice that we might be able to give you generally upon the subject.

We were also honoured with a letter from Mr. Bramston, dated the 25th ultimo, stating that, in reply to a letter from this Department, he was directed by you to transmit to us copies of the Letters Patent and Royal Instructions of the 28th March, 1876, which constituted the present form of Government in Newfoundland.

In compliance with the request contained in Mr. Meade's letter we have the honour to

Report—

That neither Her Majesty's Government nor the Colonial Government has the Constitutional right of taking the measures required for carrying out the Treaties with France, unless empowered by Imperial or Colonial legislation. Such power was given to the Crown by the 28 Geo. III, cap. 35, but this Statute was repealed by "The Statute Law Revision Act, 1871," probably because the Act was regarded as expiring with the Treaty (see Hertslet, vol. ix, p. 252).

In the event of it being necessary to interfere with the cod traps or lobster factories in order to give effect to the Convention of 1885, it is, in our opinion, expedient that recourse should be had to legislation.

An attempt should be made to obtain a Colonial Act, but should the Colonial Legislature decline to pass such a Statute, a Bill, to restore to the Crown the necessary powers, should be submitted to the Imperial Parliament.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 27.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, July* 30, 1888.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 14th instant, stating that, with reference to our Report of the 10th November last relative to the employment by British subjects of cod traps within 3 miles of the shore, and the establishment of factories on the shore for the purpose of preserving lobsters on that part of the coast of Newfoundland where the French enjoyed fishery rights, as set out in pp. 1–3 of the inclosed Parliamentary papers, he was directed by your Lordship to transmit to us a copy of a despatch from the Governor of the Colony, in which he submitted a proposal for meeting the objection of the French that the establishment of the factories in question was contrary to paragraph 2 of the Declaration annexed to the Treaty of Versailles in 1783, quoted on p. 2 of the Parliamentary papers inclosed.

That up to the year 1882, in accordance with instructions from Earl Granville in 1869, the Governor was "at liberty to make grants up to half-a-mile from the shore on those parts of the coast which are not occupied by the French, but not to confer any interest in land in the neighbourhood of those parts of the shore which are used by the French."

That the limit of half-a-mile from the shore was of course a purely arbitrary one, and that as the restrictions on the grant of land placed great impediments in the way of the development of the Colony, they were subsequently removed on the application of the Colonial Government.

That the accompanying forms* of lease and grant, which were prepared on the Reports of our predecessors of the 14th January and the 3rd February, 1882, would show the extent to which the rights of the Crown to the land on that part of the coast were considered to be limited by the Treaty rights of the French.

That it was admitted by Her Majesty's Government that the establishment of the lobster factories immediately on the sea-shore was contrary to Treaty, and that

* See No. 22.

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Mr. Bramston was to request that we would take the papers transmitted with his letter into our consideration, and that we would advise your Lordship whether, if the factories were removed to a distance of half-a-mile from the shore, they would still constitute an infringement of the rights guaranteed to the French by the various Treaties enumerated.

In obedience to your Lordship's commands we have the honour to

Report—

That, having regard to the terms of the Declaration of 1783 and of the statement annexed to the Arrangement of November 1885, we are of opinion that the building of boiling and canning houses—at a distance of half-a-mile from the shore from high-water mark—would not be a violation of the rights of the French fishermen under that Declaration.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 28.

The Law Officers of the Crown to Lord Knutsford.

Royal Courts of Justice, August 6, 1888.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 23rd ultimo, stating that, with reference to his letter of the 4th July, requesting our opinion relative to the question of the removal inland from the shore to a distance of half-a-mile of certain British lobster factories established on the coast of Newfoundland, and alleged by the French Government to be contrary to Treaty stipulations, he was directed by your Lordship to transmit to us copies of a despatch, and of a private letter received from the Governor of Newfoundland respecting the proceedings of the French at Hauling Point, White Bay, in that island.

That it would be seen that not only had a French man-of-war interfered with British subjects in the proposed erection of a lobster factory at White Bay, which was situated within the limits on the coast to which the French right of fishery extended, but had prohibited British subjects from taking lobsters in that locality, and that the French Government had, moreover, conceded to the French Company, there represented, an exclusive right to take lobsters in that locality for five years.

That those proceedings appear to be clearly in excess of the rights enjoyed by the French under the engagements between this country and France, to which our attention had been called in the letter above referred to, and that your Lordship was in communication with the Secretary of State for Foreign Affairs upon the subject.

But that the matter upon which your Lordship wished to receive our further opinion in connection with the proceedings in question was that referred to in the private letter from the Governor, namely, whether French subjects had the right, under the Treaties and engagements referred to, to fish for lobsters on that part of the coast to which their rights under those Treaties extended.

That your Lordship would be glad to be favoured with our Report at an early date, as it seemed probable that serious complications might arise.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, if the question raised by the letter of Governor Blake of the 11th July, and submitted for our opinion in the letter of Mr. Bramston of the 23rd July, is to be governed by the principles of English law, and the meaning to be attached, according to that law, to the words "fishery," "catch fish," we are of opinion that it would be held that the French had the right of catching lobsters, and of claiming the removal of any fishing gear belonging to British subjects which interfered with the exercise of such right.

But, in our judgment, the question does not depend upon such considerations, but upon the meaning to be attached to those expressions in the Treaty of Utrecht

and the other documents upon the construction of which the rights of the French depend.

Through the whole series of documents of 1713, 1763, 1783, and 1885, fishing is associated with the drying of fish.

In the Treaty of 1713 the right given as to buildings is limited to "stages of boards and huts necessary and usual for drying fish."

By the Declaration of 1783, accepted by France as sufficiently ascertaining these rights and fully satisfying the French King, it is expressly stipulated that "the method of fishing which has at all times been acknowledged, shall be the plan upon which the fishing shall be carried on there, and shall not be deviated from by either party, the French fishermen building only their scaffolds."

Under these circumstances, in our judgment, the rights which the French can claim are not general, but must be limited to the rights substantially as previously enjoyed, namely, of fishing and drying fish.

As we understand the facts, the catching and tinning of lobsters is an industry which has sprung up for the first time in recent years, and requires factories wholly different from the stages in which the fish were dried, and involves operations never before practised.

In our judgment the French are not entitled to claim these rights.

We think it right to add that, in our opinion, the question is one upon which it would be wrong to be dogmatic or to readily give way.

We think the view of the Newfoundland authorities ought to be supported particularly as regards the buildings and the French claim to warn off Newfoundland fishermen.

If a positive answer must be given, we think the French demand is in excess of their Treaty rights, and that they are not entitled to any substantially new form of fishery or fish manufactory.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 29.

The Law Officers of the Crown to Lord Knutsford.

Royal Courts of Justice, August 16, 1888.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 7th instant, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 30th ultimo, relating to the question of the removal to a distance of half-a-mile from the coast of certain lobster factories established on that part of the coast of Newfoundland on which the French had certain Treaty rights.

That your Lordship observed that our opinion on that subject appeared to be partly based on the statement appended to the "Arrangement" relating to the fisheries which was signed at Paris on the 14th November, 1885.

That your Lordship desired Mr. Bramston to point out that that "Arrangement" was signed by the British and French Commissioners "subject to the approval of their respective Governments," and that the statement formed part of a general "Arrangement" on which Concessions were proposed to be made on both sides, but that the "Arrangement" had never been finally ratified or approved, owing to its provisions having been rejected by the Legislature of Newfoundland.

That the distances fixed in the statement referred to, would be looked upon by the French Government as a concession in respect of their contention under the old Treaties in return for certain advantages proposed to be given to them by the "Arrangement," but from which advantages they were debarred by the action of the Newfoundland Legislature.

That Mr. Bramston was therefore to request that we would be good enough to inform your Lordship whether the circumstances above alluded to would affect the opinion given in our Report.

In obedience to your Lordship's commands we have the honour to

Report—

That we do not think it necessary to alter the opinion expressed in our Report of the 30th July, 1888, as we think that opinion is supported by the terms of the

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Declaration of 1783, even if no attention is to be paid to the "Arrangement" of 1885.

Having regard to the references made to the "Arrangement" of 1885 in previous letters to us and our Reports thereon, we think it right to note that we are now for the first time informed that the "Arrangement" of 1885 is not considered binding by Her Majesty's Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 30.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, December* 27, 1888.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit, for our consideration, a copy of a letter from Sir J. Winter, the Attorney-General of Newfoundland, requesting to be furnished with our opinion on certain questions as to the powers of the Colony to pass laws affecting British ships outside the territorial waters of the Colony.

That one of the questions raised by Sir J. Winter was somewhat similar to those raised in connection with the West Australian Pearl Shell Fishery Act, on which we reported on the 10th August last.

That your Lordship would be glad if we would take the questions raised by Sir J. Winter into consideration, and favour you with our opinion at our early convenience.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That we are of opinion that, unless specially authorized by Imperial Legislation, it is not within the power of the Colonial Legislature to legislate generally for the regulation of fisheries outside the 3-mile limit, unless the waters in which the fisheries are situate are so inclosed by headlands as to be the waters of Newfoundland within the principles laid down by us in our Report with reference to Western Australia dated the 18th March, 1887.

2 and 3. In our opinion the place of registration of the ships *per se* has no bearing upon the question.

The Colonial Legislature could make laws for the peace and good government of the Newfoundland fisheries, and. under that power, might control the crews of ships engaged in such fisheries, even though they might be registered elsewhere than in the Colony. Indirectly the Colony might thus obtain jurisdiction, in respect of acts done outside the territorial waters of Newfoundland, in the case of ships which had come within the provisions of the Colonial Statute as, for instance, by taking out a licence (see Report of the 10th August, 1888), respecting the West Australian Pearl Fisheries); but, except to this extent, the general principle would not be modified by the matters referred to in the questions under consideration.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 31.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, May* 31, 1889.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying printed copies of a correspondence which had taken place relating to a claim advanced on the part of the French Government for a sum of

14,000 fr. as compensation for the destruction of some of the materials used in the formation of a salmon weir erected by Captain Belin, a French subject, in the Ponds River, on the coast of Newfoundland.

That we were aware that, under certain Treaties and engagements between this country and France, which were set forth in the inclosed printed paper, French citizens had the right to take fish, and to dry them on land, on the west and north-east coasts of the Colony of Newfoundland within certain defined limits.

That Her Majesty's Government had, however, always held that the French right to take fish did not extend to the rivers of Newfoundland.

That in the case now in question it appeared that Captain Belin had erected a weir across the Ponds River on the west coast of Newfoundland for the purpose of taking salmon; such a proceeding being not only in excess of his Treaty rights as a French subject, but being also in contravention of the law of the Colony, which prohibited the taking of salmon by means of such a contrivance as a fixed weir.

That the weir so constructed by Captain Belin was removed by order of the Local Government in January 1888, after the close of the fishing season, in the circumstances shown in the papers.

That the weir appeared to have consisted of fixed pounds or wharves joined by movable railings or "racks" ("claies" in French), which last were withdrawn by the French at the end of the season, and placed on the bank ready for the next year's fishing, but that it would be observed that it was alleged, in the note addressed by M. Waddington to the Marquis of Salisbury, dated the 4th September, 1888, that Captain Belin had intended to use the material in question in the construction of a stage for drying cod at Port-au-Choix, and that he had given orders that the materials should be taken to that place in the course of the winter.

That there seemed, however, from the papers inclosed, to be every reason to believe that Belin's original intention had been to replace those racks or "claies" again the next season in the salmon weir, and that that intention was only changed after he had heard of the destruction of the weir by order of the Local Government.

That in his notes of the 4th September and 8th December, 1888, the French Ambassador referred to the guarantee given to the French to the effect that French property should not be injured by British subjects during the absence of the French in winter, but that the guarantee contained in the British Declaration attached to the Treaty of Versailles of 1783 against the injury of the scaffolds of the French during their absence would seem to refer to such constructions only as were permitted to the French by the engagements between the two countries, and that those did not include fixed weirs.

That Mr. Bramston was to request that we would take the papers transmitted with his letter into our consideration, and would inform your Lordship whether we agreed in the view last above stated, and that we would favour you with our opinion:—

1. Whether compensation could properly be claimed through diplomatic channels, either from the Colonial Government, or from Her Majesty's Government, for the destruction of the materials of the movable portion of the weir in question?

2. If not, whether the claim might not properly be resisted upon the ground that the racks formed part of the weir, and were intended to be used as such during the next fishing season, and, consequently, that they were destroyed as part of the weir which was established and used in violation of the local laws and of the Treaty? and

3. Whether, if the act of the Magistrate in the destruction of the property in question was unwarranted, Her Majesty's Government could properly refer the complainant to the Colonial Courts of Law if the person charged with the alleged damage refused to admit the claim.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, upon the facts before us, we are of opinion that, while the removal of the weir was justifiable, there was no justification for the breaking up of the raft which belonged to Captain Belin.

The intention of Captain Belin to use these articles, at a future time, for an unlawful purpose could not entitle the Magistrate to seize or destroy them, and, in

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the face of M. Waddington's letter of the 4th September, 1888, Her Majesty's Government could hardly contend, without much stronger evidence than appears before us, that such an intention existed.

The act was not done in the course of judicial administration, but in obedience to the orders of the Government, and we are of opinion that reasonable compensation should be paid.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 32.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, January* 28, 1890.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 4th ultimo, stating that he was directed by your Lordship to transmit to us copy of a despatch from the Governor of Newfoundland, with a letter from Mr. Justice Pinsent covering a presentment from the Grand Jury at St. George's Bay in that island, in which (paragraphs 8 and 9) the question was raised whether French fishermen had the right, under the Treaty engagements between this country and France, to export bait taken from the Colonial waters or to sell bait within those waters.

That the Treaty engagements above referred to were set out in the accompanying printed paper, and that copies of the Colonial Acts relating to the exportation and sale of bait were inclosed for reference.

That Mr. Bramston was to explain generally that the primary object of those Acts had been to prevent the French from purchasing bait on the south coast of Newfoundland for the prosecution of the fisheries on the banks of Newfoundland, outside territorial waters.

That the right of the French to take fish did not extend to the south coast, but that former Law Officers had advised that they had the right to take all kinds of fish along the west and north-east coasts to which their Treaty rights extended.

That on that point Mr. Bramston was to inclose two opinions given by the Law Officers of the Crown in 1859.

That your Lordship would be glad if we would be good enough to take the papers into our consideration, and inform you whether, in our opinion, the acts on the part of French fishermen, of which the presentment complained, were within the Treaty rights of the French.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That we concur in the opinion of our predecessors, as expressed in their Report of the 24th March, 1859, that the French are entitled by Treaty to take all kinds of fish, and not only such as require to be dried or otherwise treated. These Treaty rights do not entitle the French to sell or purchase bait for exportation, except under the provisions, and subject to the limitations, of the Local Act of 1889. In this respect they are exactly in the same position as the native fishermen.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 33.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, February* 27, 1890.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 13th instant, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 28th ultimo upon certain questions raised in a

presentment from the Grand Jury at St. George's Bay in Newfoundland, relating to the right of French subjects to export bait taken in the colonial waters to which their Treaty rights extended, or to sell bait within those waters.

That your Lordship was not clear as to the exact meaning which was intended to be conveyed by that part of our Report which said that "these Treaty rights do not entitle the French to sell or purchase bait for exportation except under the provisions and subject to the limitations of the Local Act of 1889. In this respect they are exactly in the same position as the native fishermen."

That that would doubtless be the case outside the Treaty limits, but that the presentment contended that within the Treaty limits the French might only catch bait for their own use, and not for sale or export, and were entitled only to catch bait for use in the shore fishery.

That your Lordship questioned whether that was the correct view of the French Treaty rights, and that you presumed that, while their right to use the land was restricted to certain specified purposes, their right to catch fish and to dispose of the fish was not limited by the Treaty either as to the kind of fish that they might take, or as to the manner of dealing with them when taken, so long as they were not landed in the Colony.

But that your Lordship felt some doubt whether our Report was intended to convey that they could only exercise their Treaty rights subject to conditions imposed by the Bait Act of 1889, and if so, subject to any other local legislation applicable to British subjects fishing within the Treaty limits. And that your Lordship would be obliged if we would again consider the presentment of the Grand Jury and favour you with a further explanation of that part of our Report above referred to.

That Mr. Bramston was to ask us to refer to section 22 of the Act, which declared that the Act should not affect the rights and privileges granted by Treaty.

We have again taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That your Lordship has rightly interpreted our former opinion.

We do not agree in the view suggested in the presentment that the right to catch bait is limited by the terms of the Treaty to bait for their own use.

We think the true view is correctly expressed in Mr. Bramston's letter of the 13th February in the paragraph commencing "Lord Knutsford questions" and ending "landed in the Colony." The rights possessed by the French under the Treaty are not in any way controlled by the local legislation.

In our judgment the French are, with respect to the exportation and sale of bait fishes, subject to the Local Act.

There is nothing in the Treaties to prevent their engaging in such sale or exportation if the provisions of the Local Act be observed.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 34.

The Law Officers of the Crown to Lord Knutsford.

[*Transmitted to the Foreign Office by the Colonial Office in their letter of July* 17, 1890.]

My Lord, *Royal Courts of Justice, July* 16, 1890.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a copy of a letter from the Admiralty, covering a request from Sir Baldwin Walker, Commander of Her Majesty's ship "Emerald," for the ratification, as an act of State, by command of superior authority, for closing British lobster factories under the *modus vivendi*. That a copy of the recent *modus vivendi* with France was inclosed.

That we were doubtless aware that the Act 5 Geo. IV, cap. 51, which authorized His Majesty to give instructions to naval officers for the enforcement of Treaties in Newfoundland, was continued to the 31st December, 1834, by the Act 2 & 3 Wm. IV, cap. 79, and that it then expired, and had not since been revived.

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That it was understood that Sir Baldwin Walker had given effect to the *modus vivendi* by closing a British lobster factory, and that, in the absence of statutory authority, he desired that his action should be ratified as an act of State done by authority of Her Majesty's Government.

That your Lordship had no official information upon the subject, but that it would appear from the statements in the newspapers that Mr. Baird, the owner of the factory, being called upon to close it, refused to do so, and that thereupon Sir B. Walker, after giving him notice of his intention, closed it by force. That it was understood that that factory was not in existence on the 1st day of July, 1889.

That Mr. Bramston was accordingly to inquire: (1) Whether a document of the nature above mentioned might be sent to Sir Baldwin Walker? (2) In what form it should be couched? and (3) What would be the legal effect as a defence in any legal proceedings that might be taken against that officer, in regard to action already taken or that he might hereafter feel obliged to take? That the case of Buron *v.* Denman (2 Ex. 167) would seem to bear upon the present case.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That we are of opinion that a document ratifying the action of Sir Baldwin Walker in putting in force the provisions of the *modus vivendi* may properly be sent to him.

2. The form may be an approval of the action of Sir Baldwin Walker by the Lords Commissioners of the Admiralty.

3. The ratification by Her Majesty's Government would be a defence to any proceedings taken against Sir Baldwin Walker in a case falling within the provisions of the arrangement embodied in the *modus vivendi*.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 35.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, August* 12, 1890.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a copy of Rules and Regulations made under section 16 of the Newfoundland Fisheries Commission Act of 1889, together with a copy of the Act.

That the Regulations aimed at protecting and preserving the fishery on the coasts of the Colony; that they were in themselves beneficial, and such as Her Majesty's Government would be disposed to approve, if, in our opinion, they might lawfully do so. For, as we should perceive from the proviso to the last Regulation, such approval was necessary before the fisheries on that part of the coast where the French had Treaty rights could be affected by the Regulations or obtain the benefit of them.

That neither the Treaty of Utrecht nor the subsequent engagements between the countries in terms exempted the French fishermen from the laws of the Colony, nor did they in terms declare that the French exercised their fishery rights subject to those laws.

That the question, so far as your Lordship had discovered, did not appear to have been directly raised in any case submitted to the Law Officers in former times, but that it was now necessary to consider whether the French fishermen, exercising their rights under the Treaties, were subject to Regulations which, though beneficial to the fishery in general, might yet to some extent restrict the operations of individual French fishermen by limiting the size of the mesh in their nets (No. 18), and by preventing the use of certain engines (No. 19) before a given date.

That it was further to be observed that by establishing a close time for lobster fishing (Regulation 7), and by fixing the size of the lobsters which might be taken, the Rules, though framed to prevent the extinction of the lobsters, would be a restriction upon the French fishermen should it be held, contrary to the contention of Her

Majesty's Government and to our Report of the 6th August, 1888, that they had a right to fish for lobsters.

That there could be no question as to the competence of the Legislature to pass, and of the Executive to enforce, such Regulations upon all fishermen, whether French or colonial, upon all other parts of the coast than that called the "French Shore," and upon colonial fishermen upon that shore, but that the question was whether the French fishermen upon that part of the coast could be bound.

That it would be observed that penalties were attached to the breach of the Regulations, and were (No. 27) to be recovered in a summary way before a Magistrate.

That your Lordship would be obliged if we would advise whether Her Majesty's Government might properly give the approval under Regulation No. 31.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, dealing with these Regulations as a whole, Her Majesty's Government cannot properly give the approval mentioned in the Regulation No. 31.

The Regulations with respect to the lobster-canning industry can, in our opinion, be lawfully made and enforced on any part of the coast, as, for the reasons stated in our Report of the 6th August, 1888, we do not admit that in respect of this industry the French have any special Treaty rights.

The Regulations with respect to the cod fishery would, however, clearly interfere with such rights, and ought not to be attempted to be made except by arrangement, or Convention, with the French Government.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

THE "ROYAL GAZETTE EXTRAORDINARY."

(Published by Authority.)

St. John's, Newfoundland, June 16, 1890.

THE following Rules and Regulations, made under the Fisheries Commission Act of 1889, passed both branches of the Legislature at its last Session, and became law by publication in the "Royal Gazette."

Secretary's Office, June 16, 1890. (Signed) R. BOND, *Colonial Secretary.*

Rules and Regulations respecting the Lobster Industry and Cod Fishery, made under and by virtue of Section XVI of an Act passed in the Fifty-second year of the Reign of Her present Majesty, entitled "An Act to provide for the Formation of a Fisheries Commission, and for other purposes."

I.—*Lobster Canning Industry.*

1. No owner or manager shall engage in the business of canning lobsters in the Island of Newfoundland without having previously taken out a licence.

2. The Receiver-General, or any Justice, Sub-Collector, or preventive officer shall, on application, issue such licences, and shall make a return to the Fisheries Commission of all licences issued within three months after granting the same.

3. There shall be no fee charged for said licences.

4. The Fisheries Commission shall supply all those authorized to issue licences with a sufficient number of blank forms of licence and of printed copies of all Rules and Regulations relating to the lobster industry.

The said licence shall be in the following form, viz.:—

NEWFOUNDLAND:
District.

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By virtue of the power vested in me under the Rules and Regulations respecting the lobster industry made under and by virtue of section 16 of an Act passed in the fifty-second year of the reign of Her present Majesty, entitled "An Act to provide for the formation of a Fisheries Commission, and for other purposes," I, , of , do hereby licence to engage in the business of lobster canning at for a period of one year from the date hereof, subject to the said Rules and Regulations, a copy of which is hereto attached.

Given under my hand at , in the district of , this day of , A.D. 18 .

6. The owner or manager of any lobster-canning establishment convicted before a Justice of a breach of Rule and Regulation numbered 1 shall be subject to a penalty not exceeding 400 dollars, and, in addition thereto, such Justice may declare all the lobster gear of such owner or manager forfeited, and order the same to be sold at public auction.

7. No person within this Colony shall spear, kill, take, catch, trap, buy, or sell any lobster for the purpose of being canned, from the 5th day of August in any year until the 1st day of April in the next year, under a penalty not exceeding 5 dollars for each lobster so taken.

Provided that any person may spear, kill, take, catch, trap, buy, or sell any lobster between the 5th day of September and the 30th day of November in the year 1890.

Provided also that any person may, if he elect not to take advantage of the provision immediately preceding, spear, kill, take, catch, trap, buy, or sell any lobster for or to any lobster factory situated northward of Cape St. Francis, from the 1st day of April to the 1st day of September in the present year 1890, and it shall be unlawful for any person making such election to spear, kill, take, catch, trap, buy, or sell any lobster after the 1st day of September aforesaid, under the penalty hereinbefore provided.

8. Except as hereinafter provided, no person shall, on any part of the coast or islands of this Colony, spear, kill, catch, take, trap, buy, or sell, or have in his possession, any lobster less than 10 inches in length, under a penalty of not exceeding 5 dollars for each offence.

Provided that this section shall not, during the fishing season of 1890, apply to that part of the coast of this Colony extending from Pass Island along the coast of Fortune Bay to Fortune Bay Head, but no person resident on the last-mentioned part of the coast shall, during the fishing season of 1890, spear, kill, catch, take, trap, buy, or sell, or have in his possession any lobster less than 9 inches in length, under a penalty not exceeding 5 dollars for each offence.

9. Any fisherman may catch lobsters of any length, at any time, for food for himself and his family.

10. For the purposes of this Act, a lobster shall be measured from the tip of the rostrum, or frontal projection, to the end of the telson, or tail, exclusive of the hairs.

11. No person shall offer for sale a tail of a lobster which has been separated from the body under a penalty not exceeding 5 dollars for each offence; nor shall any such tail of a lobster be purchased under a like penalty.

12. It shall be the duty of Justices, Sub-Collectors, Fish-Wardens, preventive officers, and constables to see to and aid in the carrying out of the provisions of these Rules and Regulations, and the manager or proprietor of any canning establishment shall, on demand, produce his licence to any such Justice, Fish-Warden, Sub-Collector, preventive officer, or constable, and upon refusing to do so, or otherwise obstructing any such officer in the discharge of his duty, shall be subject to a penalty not exceeding 400 dollars.

13. On the requisition of any person, authorized or employed by the Fisheries Commission to hatch lobsters, the manager or owner of any lobster-canning establishment shall, as far as possible, and with due care, take from and keep in such manner as may be prescribed by the Fisheries Commission all eggs attached to lobsters brought to said establishment, and deliver the same to a person authorized by the Fisheries Commission under a penalty not exceeding 5 dollars for each refusal.

14. Any person convicted before any Justice of violation of these Rules and Regulations may by order of such Justice have his licence forfeited and be declared incompetent of holding a licence for the canning of lobsters for any period not exceeding one year thereafter.

15. All penalties and all proceeds of sales of forfeited lobster gear imposed and collected under and by virtue of the foregoing Rules and Regulations shall be distributed as follows, viz., one-half to the person prosecuting the offender to conviction, and the residue to the Receiver-General for the use of the Colony.

16. Any person may secure, at any time, or by any means, any lobster or lobsters for scientific or procreative purposes, anything in these Rules and Regulations contained to the contrary notwithstanding.

II.—*Cod Fishery.*

17. The use of cod-traps shall be allowed in the fisheries of Newfoundland and its dependencies, subject to the limitations hereinafter contained.

18. No person shall, upon the coast of Newfoundland or its dependencies, use, for the purpose of taking codfish, any cod-trap the walls or sides of which consists of meshes of less than 4 inches; nor shall any person use for the said purpose, in connection with the walls or sides of any cod-trap, any netting which consists of meshes of less than 4 inches, except for the purpose of removing fish from the trap.

19. No person shall place in the waters along the coast of Newfoundland any cod-trap or cod-trap mooring before the 15th day of June in any year.

20. No person shall place in the waters of that portion of Labrador coast which is under the control of the Government of Newfoundland any cod-trap or cod-trap mooring before the 25th day of June in any year.

21. Any cod-trap, contrivance used in connection therewith, or cod-trap mooring used or placed in contravention of Rules and Regulations numbered 18, 19, and 20 may be seized by any Justice, Sub-Collector of Customs, preventive officer, Fishery-Warden, or constable, on view, or by warrant issued by any Justice upon complaint made upon oath before him, and detained until the trial of the offender; and upon conviction the same may be declared forfeited, and ordered to be sold at public auction.

22. Any person violating Rules and Regulations numbered 18, 19, and 20 shall be subject to a penalty not exceeding 100 dollars. If such persons be the owner of the trap, contrivance used in connection therewith, or mooring, the above penalty of 100 dollars shall be in addition to the forfeiture provided for under Rule and Regulation numbered 21.

23. Any person using a herring seine or caplin seine to take or haul codfish shall, on conviction, forfeit the same, and be subject to a penalty not exceeding 100 dollars.

24. No person shall in the following harbours in Placentia Bay, namely, Paradise Sound, Boat Harbour, and Roger's Harbour, use any bultow, cod-trap, cod-seine, or any other contrivance, except hook-and-line, for catching codfish, under a penalty of 100 dollars, and confiscation of such contrivance hereby prohibited.

25. Fish required for scientific or procreative purposes or for immediate use may be taken at any time by any method.

26. All penalties, and the proceeds of all sales of forfeited fishing gear imposed and collected under the foregoing Rules and Regulations, shall be distributed as follows, viz., one-half to the person prosecuting the offender to conviction, and the residue to the Receiver-General for the use of the Colony.

27. All forfeitures and penalties for a breach of these Rules and Regulations shall be recovered in a summary manner before a Stipendiary Magistrate.

28. Whenever the penalty imposed shall exceed 100 dollars, or the penalty and the value of the forfeited fishing gear together amount to more than 100 dollars, then any person feeling himself aggrieved by any Judgment by such Magistrate shall have liberty to appeal to the Supreme Court, in St. John's, or on Circuit, upon giving sufficient security for the due performance of such Judgment, if confirmed, and for the payment of all costs, and to prosecute the said appeal.

29. The security provided under Rule and Regulation numbered 28 shall in no case exceed the sum of 1,000 dollars.

30. Pending the hearing and adjudication of such appeal, the owner or master of the cod-trap herring seine, or caplin seine shall be permitted to fish with the same.

31. These Rules shall continue in force for one year from the 15th day of May, 1890, and until the next Session of the Legislature; and provided further that these Rules shall not be construed as affecting the fisheries on that part of the coast where the French have Treaty rights, until the approval of Her Majesty has been obtained.

Passed the Legislative Assembly the 6th June, 1890.

Passed the Legislative Council the 9th June, 1890.

His Excellency the Governor in Council has been pleased to appoint Thomas Peyton, Esquire, to be Fishery-Warden for Notre-Dame Bay.

Secretary's Office, June 16, 1890.

No. 36.

The Law Officers of the Crown to Lord Knutsford.

[*Transmitted in Colonial Office letter of March* 9, 1891.]

My Lord, *Royal Courts of Justice, March* 6, 1891.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 23rd ultimo, stating that we should remember that the question of granting compensation to the owners of certain lobster factories in Newfoundland was discussed at a meeting at the Colonial Office which we attended last summer, but that no action was then taken.

That it had since been reported that other factories had been or were being erected, possibly with a view to being closed by Her Majesty's officers, and thereupon being made the subject of a claim for damages; and that Mr. Bramston was directed by your Lordship to transmit, for our consideration, the draft of a despatch which you proposed to address to the Governor of Newfoundland respecting factories begun since the commencement of the *modus vivendi* of last year.

That your Lordship would be glad to be favoured with any observations which we might have to offer on the draft, especially as to whether, in paragraph 5, Her Majesty's Government were sufficiently guarded against any admission of present liability, and as to how far the proposed notice would protect Her Majesty's Government against claims for compensation.

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We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the draft despatch submitted to us may properly be sent to the Governor of Newfoundland. The language of paragraph 5 appears to us sufficiently to guard Her Majesty's Government against an admission of present liability. The proposed notice will not protect Her Majesty's Government against claims for compensation if it should be decided that factories have been closed without legal authority, but we think it desirable that such notice should be given, as its effect will probably be to check the erection of such factories.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of Despatch from Lord Knutsford to Governor Sir T. O'Brien.

Sir, *Downing Street, February* , 1891.

I HAVE the honour to acquaint you that it has been brought to the notice of Her Majesty's Government that since the publication of the temporary arrangement entered into with the Government of France last year with respect to lobster factories on that part of the coast of Newfoundland on which the French have certain rights of fishing, several new lobster factories are being erected or are in contemplation.

2. As you are aware, the French Government have always maintained that such factories, being buildings of a more or less permanent character, come within the definition of "fixed settlements," and that they are entitled to call upon Her Majesty's Government to remove them, under the Declaration attached to the Treaty of Versailles, 1783.

3. Whether this construction is well founded or not is one of the questions which will shortly have to be decided; and, in the meantime, Her Majesty's Government are undoubtedly bound to prevent British subjects from interrupting the prosecution of the legitimate fishery of the French, and consequently in all Crown grants on that part of the coast a reservation is required of the rights guaranteed to the French by the various Treaties and engagements entered into by the Government of Great Britain.

4. These circumstances are well known in Newfoundland, and Her Majesty's Government cannot admit that they are under any legal liability to pay compensation to the owners of factories which, in pursuance of engagements with the Government of France, they may be called upon to close as interfering with the rights guaranteed to French subjects. Prior, however, to March last, when the temporary arrangement with France was published, there had been, in spite of the frequent complaints of the French Government, practically but little interference with the working of the numerous factories erected and worked by British subjects; and, encouraged by this immunity, many new factories were constructed in 1889 and the earlier part of 1890, the operations of some of which were interfered with under that arrangement, although a large number were allowed to pursue the fishery.

5. The question of the legal right of Her Majesty's Government to give effect to that arrangement is now before the Courts, but some time must necessarily elapse before a final decision can be given.

Her Majesty's Government, therefore, in view of the circumstances mentioned above, though they cannot admit any legal claim to compensation on the part of persons whose factories had to be closed, or who had expended money and entered into contracts, subsequently to the 1st July, 1889, and before the publication of the *modus vivendi*, which that arrangement prevented them from executing, think it desirable that you should appoint a Commission to inquire into all such cases, with the exception of those which form the subject of the legal proceedings referred to, and report, for the consideration of Her Majesty's Government, what was the actual loss (if any) sustained in each case through the enforcement of the provisions of the *modus vivendi*.

While, however, they are willing to examine into the cases mentioned, it being possible that in some instances persons proposing to erect factories may not have had sufficient notice that such factories were liable to be closed, no such consideration occurs in the case of persons who have erected factories since the 12th March, 1890; and I request that you will give public notice that all persons erecting or having erected lobster factories since that date will do so, and have done so, at their own risk, and that Her Majesty's Government will not entertain any claims for compensation in respect of such factories if it should be found necessary to close them pending a permanent settlement of the Fishery question.

I have the less hesitation in desiring you to issue this notice, as from the Reports which I have received on the lobster industry it seems clear that the fishery is being exhausted by over-fishing, and there is reason to think that factories are being unduly multiplied on the coast.

I have, &c.

No. 37.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, March* 18, 1891.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 18th ultimo, stating that, with reference to our Report of the 10th November, 1887, in which we suggested that, if the Legislature of Newfoundland should decline to pass a Statute to enable the naval officers to carry out the Treaty engagements of Her Majesty's Government with regard to the Newfoundland fisheries, recourse should be had to the Imperial Parliament, he was directed by your Lordship to transmit to us copies of telegraphic correspondence with the Governor of Newfoundland, from which it would be seen that the Colonial Government refused to bring forward such legislation.

That in those circumstances the inclosed draft Bill had been prepared for introduction into the Imperial Parliament, and that your Lordship would be glad if we would take it into consideration, and favour you with our opinion whether it was proper and sufficient for the purpose.

In obedience to your Lordship's commands we have the honour to

Report—

That we are of opinion that, so far as the enacting part is concerned, the draft Bill is sufficient for the purpose; but it appears to us to be worthy of consideration whether mention should not be made, in the preamble, of the Convention of 1885. This, of course, is not necessary, but it might be useful for Parliamentary purposes.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Draft of a Bill to revive certain Sections of an Act of the fifth year of the reign of King George the Fourth, chapter fifty-one, for the purpose of carrying into effect Engagements with France respecting Fisheries in Newfoundland. A.D. 1891.

WHEREAS divers engagements beginning in the year 1713 have been entered into between Great Britain and France respecting the Newfoundland fisheries:

And whereas for the purpose of carrying into effect such engagements (in this Act referred to as the Newfoundland fishery engagements) the Act of 1824, mentioned in the Schedule to this Act, enacted the sections set out in that Schedule:

And whereas a Legislature, known as the General Assembly, was duly constituted in and for Newfoundland in the year 1832:

And whereas, in view of the powers so vested in the Legislature of Newfoundland, the Act of 1824, which was a temporary Act, was continued for a limited time only, and was allowed to expire on the 31st day of December, 1834; but the Legislature of Newfoundland have made no provision of a similar character:

And whereas, since the expiration of the Act of 1824, the officers of Her Majesty's ships have continued, as before, to carry into effect, under Her Majesty's orders and instructions, the Newfoundland fishery engagements; and recently, in consequence of the absence of legislative provision, doubts have arisen as to the powers of the said officers for that purpose:

And whereas differences have arisen between the United Kingdom and France with respect to the Newfoundland fishery engagements, and negotiations are in progress with a view to arrange such differences by referring the questions in dispute to arbitration, and, pending the completion of such negotiations, temporary arrangements may from time to time be necessary, and it is expedient to remove the above doubts, and revive the enactments set out in the Schedule to this Act, and apply the same to any temporary arrangements that may be made as aforesaid, and to any permanent arrangement with respect to such differences:

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1.) The enactments set out in the Schedule to this Act shall be revived and have full effect, and the Treaty or Treaties therein named shall include not only the Newfoundland fishery engagements, but also any temporary arrangement made with France, either before or after the passing of this Act, for adjusting the differences arising out of those engagements. Revival of 5 Geo. IV, cap. 51, secs. 12, 13.

(2.) If any permanent arrangement is made between the United Kingdom and France with respect to the differences which have arisen upon the Newfoundland fishery engagements, it shall be lawful for Her Majesty, by Order in Council, to direct that the enactments hereby revived shall apply, and the

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same shall apply accordingly as if such permanent arrangement were a Treaty mentioned in the said enactments:

(3.) Provided that before such Order is made, the draft thereof shall have been communicated to the Government of Newfoundland, and lain on the Table of both Houses of the Imperial Parliament for not less than one month.

Suspension of Act on provision being made by Legislature of Newfoundland.

2. Where Her Majesty the Queen in Council is satisfied that by any law made before or after the passing of this Act by the Legislature of Newfoundland sufficient provision is made for carrying into effect, under Her Majesty's orders and instructions, the Newfoundland fishery engagements, or any such arrangement as above in this Act mentioned, it shall be lawful for Her Majesty in Council to suspend the operation of this Act, or any part thereof, so long as such law continues in force and no longer, and to direct that such law, or any part thereof, shall have effect with or without modifications and alterations as if it were part of this Act, and any Order in Council so made shall have full effect.

Declaration as to Courts.

3. A forfeiture under the enactments set out in the Schedule to this Act may be enforced by proceedings in the High Court of Justice in England, or in any Court of Record in Newfoundland.

Short title.

4. This Act may be cited as "The Newfoundland Fisheries Act, 1891."

SCHEDULE

Enactments of Act of 1824 *applied.*

5 Geo. IV, cap. 51, entitled "An Act to repeal several Laws relating to the Fisheries carried on upon the Banks and Shores of Newfoundland, and to make provision for the better conduct of the said Fisheries for five years, and from thence to the end of the then next Session of Parliament."

Section XII.

Instructions may be given to Governor of Newfoundland for purposes of fulfilling Treaties, &c., with Foreign States.

It shall and may be lawful for His Majesty, his heirs and successors, by advice of his or their Council, from time to time to give such orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, as he or they shall deem proper and necessary to fulfil the purposes of any Treaty or Treaties now in force between His Majesty and any foreign State or Power; and in case it shall be necessary to that end to give orders and instructions to the Governor, or other officer or officers aforesaid, to remove, or cause to be removed, any stages, flakes, train fats, or other works whatever, for the purpose of carrying on the fishery, erected by His Majesty's subjects on that part of the coast of Newfoundland which lies between Cape St. John passing to the north, and descending to the western coast of the said island to the place called Cape Raye, and also all ships, vessels, and boats belonging to His Majesty's subjects which shall be found within the limits aforesaid; and also, in case of refusal to depart from within the limits aforesaid, to compel any of His Majesty's subjects to depart from thence, any law, custom, or usage to the contrary notwithstanding.

Section XIII.

Penalty on persons neglecting to comply with such Instructions, 50*l.*

If any person or persons shall refuse, upon requisition made by the Governor, or any officer or officers acting under him in pursuance of His Majesty's orders or instructions as aforesaid, to depart from within the limit aforesaid, or otherwise to conform to such requisitions and directions as such Governor or other officer as aforesaid shall make or give for the purposes aforesaid, every such person or persons so refusing or otherwise offending against the same shall forfeit the sum of 50*l.* sterling money: Provided always that every such suit or prosecution, if the same be commenced in Newfoundland, shall be commenced within one year, and if commenced in any of His Majesty's Courts of Record at Westminster, within two years from the time of the commission of such offence.

No. 38.

The Law Officers of the Crown to Lord Knutsford.

Royal Courts of Justice, April 6, 1891.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 24th ultimo, stating that, with reference to our Report of the 18th March,* he was directed by your Lordship to again transmit to us, for our consideration, the draft Newfoundland Fisheries Bill, together with a copy of the *modus vivendi*, which had been renewed for the approaching season.

That the powers conferred on Her Majesty by section 12 of the revived Act were "to give such orders and instructions to the Governor of Newfoundland, or to any officer or officers on that station, as Her Majesty shall deem proper and necessary to fulfil the purposes of any Treaty or Treaties now in force, ... and, in case it shall be necessary to that end, to give orders and instructions to the Governor, or other officer or officers aforesaid, to remove, or cause to be removed, any stages, flakes,

* No. 37.

train fats, or other works whatever, for the purpose of carrying on the fishery," &c., &c.; and that a question had been raised whether the powers so conferred were sufficient to enable the naval officers to close or remove lobster factories which, according to the position assumed by Her Majesty's Government, were not works "for the purpose of carrying on the *fishery*" within the meaning of the Treaties or of the Act of 1824. That upon that point Mr. Bramston was to refer us to our Report of the 6th August, 1888.

That it was contended, however, that the first part of section 12 of the Act of 1824, which rendered it lawful for "His Majesty, his heirs and successors . . . . to give such orders as he or they shall deem proper and necessary to fulfil the purposes of any Treaty, &c.," taken in conjunction with subsection (1) of clause 1 of the Bill, would enable Her Majesty, by Order in Council, to give instructions for dealing with lobster factories in the manner required by the *modus vivendi*.

That your Lordship would be glad to be furnished with our opinion on that question, and as to what amendment, if any, was required in the Bill to enable the naval officers to act if necessary in the manner above stated.

That Mr. Bramston was to inclose a copy of a Memorandum by the Parliamentary Counsel respecting the 3rd clause of the Bill. That your Lordship was disposed to think it might be desirable to retain the clause, but that you would be glad to receive our opinion as to whether it was necessary or advisable to do so.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the first part of section 12 of the Act of 1824, taken in conjunction with clause 1 (1) of the Bill, will enable Her Majesty, by Order in Council, to give instructions for dealing with lobster factories in the manner required by the *modus vivendi*.

We doubt very much whether the 3rd clause of the Bill is necessary or expedient, and we think that, upon the whole, it is better to omit that clause.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

No. 39.

The Law Officers of the Crown to Lord Knutsford.

Royal Courts of Justice, May 11, 1891.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Wingfield's letter of the 4th instant, stating that he was directed by your Lordship to transmit, for our consideration, the accompanying Acts passed by the Legislature of Newfoundland in 1887, 1888, and 1889 respectively, to regulate the sale of bait fishes, and also a copy of certain Instructions issued by the Colonial Secretary of Newfoundland on the 20th March, 1891, and to request that your Lordship might be informed whether, in our opinion, the action taken by the Newfoundland Government, under the circumstances which he was to describe, had been legal and Constitutional.

That we should observe that section 3 of the Consolidating Act of 1889 required that no licences should be issued under the preceding sections except under the authority of the Governor in Council and countersigned by the Colonial Secretary; and that under the following section (4) the Governor in Council might by Proclamation suspend or limit the operation of the Act and the issue of licences thereunder in the manner therein expressly set forth.

That a meeting of the Executive Council was held on the 18th March, 1891, and that on the 19th the Governor issued the inclosed Proclamation, limiting the quantity of bait to be taken or purchased by a licensed vessel.

That on the following day, the 20th March, the accompanying Instructions appeared:—That they purported to be issued by the Colonial Secretary and not by Proclamation of the Governor in Council. That it might be taken that in fact those Instructions were authorized by the Governor and Executive Council at the meeting of the 18th; and that it would be seen that they directed that no licences should be granted except to Newfoundland and United States' fishing-vessels.

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That the accompanying telegrams had passed on the subject, dated the 18th, 20th, and 23rd March, but that your Lordship did not feel satisfied as to the legality of the view taken by the Colonial Government as to their power under the said Act or otherwise, to thus discriminate in the granting of licences (*a*) between the subjects of two friendly foreign Powers (France and the United States); (*b*) between British subjects residing in Newfoundland and Canadians or other British subjects residing elsewhere; or (*c*) between subjects of a foreign Power and British subjects from outside the Colony.

That it had been represented to your Lordship that in the absence of any law specifically excluding any class of British subjects from the use of any British territorial waters for fishing or other purposes, such waters were equally free to all subjects of the Queen. That the Act in question (section 1) prohibited the taking of bait fishes by unlicensed persons. and that the Government apparently considered that the Act entitled them, at their discretion, to grant or refuse a licence to any person or class of persons.

That if that discretion did exist, the question arose whether it could properly be exercised as regards the fishermen of a Colony or foreign country, except by means of Proclamation under section 4, limiting the operation of the Act in respect of such classes of fishermen.

That assuming that such a Proclamation was not necessary, and that the instructions referred to had force and effect, your Lordship desired to know whether the Governor in Executive Council could, contrary to the advice of a majority of that Council, issue a Proclamation either cancelling those instructions, or excluding from the operation of the Act of 1889, any district, or part of the Colony, or the coast thereof, where British subjects, other than inhabitants of Newfoundland, might desire to take bait fishes.

That Mr. Wingfield was to inclose a copy of the Royal Instructions to the Governor, and to direct our attention to Articles 7 and 8 of those Instructions.

That Mr. Wingfield was further to observe that it was competent to Her Majesty's Government to advise the Queen to disallow the Act of 1889, and that the adoption of that course had been urged by the Canadian Government.

That your Lordship apprehended, however, that such disallowance would revive the operation of the Acts of 1887 and 1888, which were repealed by the Act of 1889, and would, therefore, not have the effect which was desired by the Canadian Government of putting an end altogether to the Bait Acts. That it was further apprehended that the disallowance of the Act of 1889 would revoke the Instructions issued thereunder, supposing them to be now valid.

That the principal questions on which your Lordship desired to be favoured with our opinion were:—

1. Did the Colonial Act of 1889 give power to the Colonial Government to refuse licences to Canadian and French fishermen, while granting such licences to United States' and Colonial fishermen?

2. If it did give such power, might that power be exercised otherwise than by Proclamation of the Governor under section 4 of the said Act?

3. Further, if the Act of 1889 did not give such power of discriminating, could the Colonial Government in its executive capacity arbitrarily exclude any class of Her Majesty's subjects from fishing in the British waters of Newfoundland, while allowing other British subjects and foreigners to do so?

4. If the Instructions referred to were valid, could they be repealed by the Governor without the consent of a majority of the Executive Council; or could the Governor, without such consent, exclude any district or part of the Colony or the coasts thereof from the operation of the said Act of 1889?

5. What would be the effect of now advising Her Majesty to disallow the Act of 1889?

That the action taken by the Colonial Government threatened to cause disorder among the fishermen now assembled on the south coasts of Newfoundland; and that Mr. Wingfield was to request that your Lordship might be favoured with our opinion on the above questions at our earliest convenience.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

1. That, in our opinion, the Colonial Government has power to refuse to give licences under the Act of 1889 to French fishermen, as foreigners, not being entitled to

fish in the British territorial waters of Newfoundland, do not belong to the class of persons to whom the Act contemplates that licences shall be granted. United States' fishermen are not subject to exclusion on this ground, by reason of the special rights belonging to the United States and recognized in the Treaties of 1783 and 1818 to enjoy, in common with British subjects, the fishery of these waters. In our opinion the Colonial Government is not empowered by the Act, or entitled apart from the Act, to exclude Canadian or other British fishermen from obtaining licences.

2 and 3. In our opinion the Act of 1889 gives by implication a power to the Colonial Government to make Regulations as to the mode and terms of issuing licences, but not to discriminate between persons who at the time of its passing were entitled to fish in territorial waters.

4. The Instructions not having been issued by Proclamation of the Governor in Council could, even if in all respects valid, be withdrawn by the authority of the Governor; but it is not competent to the Governor, without the consent of the Executive Council, by a Proclamation under section 4, to exclude any district, or part of the Colony, or the coasts thereof, from the operation of the Act.

5. The disallowance of the Act of 1889 would revive the Acts of 1887 and 1888; but the power of limiting the operation of the Acts contained in section 17 of the Act of 1888 is substantially the same as that contained in section 4 of the Act of 1889, and must be exercised in the same manner.

This opinion applies also to licences for the purchase of bait for export, subject to the Treaty rights of foreign nations, which are preserved by section 22 of the Act of 1889.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex 1

Proclamation.

By his Excellency Lieutenant-Colonel Sir J. Terence O'Brien, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Governor and Commander-in-chief in and over the Island of Newfoundland and its Dependencies.

(Signed) T. O'BRIEN, *Lieutenant-Colonel, Governor.*

WHEREAS by my Proclamation of the 2nd day of April, A.D. 1890, I gave notice to all whom it concerned, that from and after the 8th day of April of the same year, the Act passed in the fifty-second year of the reign of Her present Majesty, entitled "An Act to amend and consolidate the Laws relating to Exportation and Sale of Bait Fishes" should come into operation;

And whereas by the 4th section of the said Act, it is provided that "The Governor in Council may, from time to time, by Proclamation, suspend or limit the operation of this Act, and the issue of licences thereunder, in relation to any district or part of this Colony, or the coasts thereof, and for such period and in relation to sale and exportation to such places or for such purposes and in such quantities as shall appear expedient, and as shall be declared and defined in the Proclamation;

And whereas under the said Act it is intended to issue licences for the catching, sale, and purchase of bait;

And whereas it is expedient to limit the quantity of bait that any vessel, having obtained a licence, shall be permitted to take or purchase under the said Act, in this Colony, for the purpose of the fishery. I do, therefore, by this my Proclamation, declare that no vessel shall be permitted to take or purchase more than eight barrels of herring for each dory employed by such vessel, or ten barrels of caplin for each dory employed by such vessel, or four barrels of squid for each dory employed by such vessel; and without a new licence no vessel shall be permitted to take or purchase a further supply of herring bait within a period of eighteen days from the date of previous licence, or of caplin or squid bait within a period of fourteen days from the date of previous licence.

And of these presents all Magistrates, Customs officers, constables, and all other officers in the execution of their offices about the premises, and all and singular other persons whom it shall or may concern, are hereby required to take due notice and govern themselves accordingly.

Given under my hand and seal, at the Government House, St. John's, this 19th day of March, A.D. 1891

By his Excellency's commands,
(Signed) R. BOND, *Colonial Secretary.*

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Annex 2.

Instructions for Magistrates, Customs Officers, &c., in relation to enforcement of "Bait Act, 1889."

UNDER Proclamation of the Governor no exportation, or sale, or purchase, or taking of bait fishes of any sort, is to be permitted without a licence.

Licences of three sorts will be granted: One, free of charge, to vessels belonging to Newfoundland prosecuting the deep-sea fishery, to purchase, haul, or take bait fishes; one to Newfoundland punt fishermen, free of charge, to catch bait for sale to foreign vessels or otherwise; and one, free of charge, to American vessels to purchase bait.

In all cases of applications for licences (except Newfoundland punt fishermen who catch for sale), the party applying must make an affidavit setting forth all the particulars required te be stated in the licence. (See "Bait Act, 1889.") This affidavit may be made either by the master of the vessel for which the licence is applied for, or by the owner, or agent of the owner, or on behalf of the master. Blank forms of these affidavits, of each sort, are furnished. The affidavits may be made before a Magistrate or a Customs officer.

You will notice that the licences have been signed by the Colonial Secretary, and they must be also signed by the person issuing the licence, either a Customs officer or Magistrate.

No licence shall be granted except to Newfoundland and United States' fishing-vessels, and before granting such licence the Customs officer or Magistrate shall require to have produced to him the ship's register in the case of Newfoundland vessels, and in the case of United States' vessels the clearance papers from the American Customs.

All vessels shall be restricted to eight barrels of herring per dory, to ten barrels of caplin per dory, and to four barrels of squid per dory, and shall be compelled to take out a new licence upon each entry into any port in this Colony.

A second licence to purchase or take herring bait shall not be granted within eighteen days from the date of the previous licence, and a second licence to purchase or take caplin or squid bait shall not be granted within fourteen days from the date of the previous licence.

Upon granting a licence to an American vessel, you shall notify the Customs officers at all the other ports of entry, by telegram or letter, that you granted such licence, stating date of issue, so as to prevent such vessel from obtaining a second licence within the period stated above.

In the case of a vessel taking bait at your port, you will see that only the quantity named in licence is taken aboard.

If a vessel is found supplying bait in contravention of the provisions of this Act, the licence of said vessel shall be forfeited forthwith.

No American vessel is to be permitted to leave the port where she has baited unless the bait purchased has been iced down.

(Signed) R. BOND, *Colonial Secretary.*

Secretary's Office, March 20, 1891.

No. 40.

The Law Officers of the Crown to the Marquis of Salisbury.—(*Received June* 17.)

My Lord, *Royal Courts of Justice, June* 16, 1891.

WE were honoured with your Lordship's commands signified in Sir Thomas Sanderson's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to a question which had been raised by the French Ambassador at this Court as to the interpretation of Article II of the Agreement of the 11th March, 1891, between Great Britain and France, for referring to arbitration certain questions connected with the Newfoundland fisheries, and as to the *modus operandi* by which the decisions of the Commission of Arbitration were to be enforced.

That the Agreement above mentioned, after reciting that the Governments of France and Great Britain respectively had resolved to submit the solution of certain difficulties which had arisen on a portion of the coasts of Newfoundland to a Commission of Arbitration, contained a reciprocal engagement on behalf of the two Governments "in so far as each may be concerned to execute the decisions of the Commission of Arbitration" (Article II).

That it was averred by the French Ambassador, on behalf of his Government, that France had a right to look to Her Majesty's Government, and to them alone, for the satisfaction of her Treaty rights on the Newfoundland shore, and that Her Majesty's Government had no right to delegate that duty to any judicial Tribunal.

That he objected especially to a Colonial Tribunal, on account of the prejudice by which he assumed its proceedings and decisions would be affected, but that generally his objection extended on principle to all judicial Tribunals, whether Colonial or Imperial, on the ground that according to the modern practice such Tribunals must

be entirely independent of the Executive Government, which could have no influence nor power over their decisions.

That he alleged that if the views of such a Tribunal should be at variance with, and if its decision should consequently derogate from, the Treaty rights of France, Her Majesty's Government could not set aside such decisions when they had been delivered, and would consequently be unable to fulfil their Treaty obligations.

That he argued, therefore, that in proposing to assign the execution of the decisions of the Arbitration Commission to either a Colonial or Imperial judiciary, Her Majesty's Government were surrendering their freedom of action and their power of carrying out their international obligations into the hands of a power over which they have no control; and that he stated that it was impossible for the Government of the French Republic to regard such an arrangement as a satisfactory discharge of the engagement entered into by Great Britain towards France under Article II of the Arbitration Agreement above quoted.

That M. Waddington had pressed the above doctrine with great earnestness upon your Lordship, while the French Foreign Minister had made similar representations to Her Majesty's Ambassador at Paris (see Lord Lytton's No. 192, Confidential, of the 4th June), and that it appeared likely to prove a serious impediment to the further progress of the Arbitration.

That it appeared, however, to your Lordship, that the views put forward by the French Government had no warrant in international law, and were, moreover, inconsistent with the preliminary declaration of M. Waddington (with which your Lordship found yourself quite in accord), that France had a right to look to Her Majesty's Government, and to them alone, for the satisfaction of her Treaty rights on the Newfoundland shore.

That your Lordship conceived that the one and only right which France had acquired under the Arbitration Agreement was a substantial and honest execution and performance on the part of the Imperial Government of the awards and decisions of the Commission.

That to that engagement Great Britain was, in any circumstances, and under any Government, effectively bound in international obligation to France, and that the latter Power had the fullest right to require from her a due performance of her pledge.

That in a note signed at the same time as the Agreement, your Lordship stated that "Her Britannic Majesty's Government reserves expressly the approval of the British Parliament before the above-mentioned Agreement is put into execution."

That that approval had been given by both Houses of Parliament, and that your Lordship had given the French Government full assurances and explanations on that point in your note to M. Waddington of the 1st instant; but that France, having received those assurances, had no right, as it appeared to your Lordship, to investigate the municipal arrangements by which Great Britain proposed to secure the performance of her international duty, nor to dictate to Great Britain the particular *modus operandi* which she must select for the carrying out of her engagements.

That the Arbitration Agreement contained no stipulation whatever with regard to methods or processes to be employed by either Government to ensure the execution of its provisions, and that the inference from that fact, as from the general principles of international law, would equally seem to be that each party was to be left entirely unfettered to choose such means as, in its judgment, were most suitable and effective for the purpose, while the other party retained the right of remonstrance or resistance if those means should, in practice, be found to be inefficacious or illusory.

That Sir Thomas Sanderson was to add that, so far as the Foreign Office was aware, Her Majesty's Government had made no admission either in the various Treaties and Agreements entered into with respect to Newfoundland prior to the Agreement under consideration, and still binding as between Great Britain and France, or in the diplomatic correspondence which had passed between the two Powers, which could be appealed to as modifying in this particular case those general considerations of international law which governed, as between nations, the discharge of their respective Treaty obligations.

That in case, however, of our wishing to consult the principal documents from which the obligations of Great Britain in the matter under consideration were derived, Sir Thomas Sanderson was more particularly to refer us to the following:—

Article XIII of the Treaty of Utrecht, 1713;

Article V of the Treaty of Paris, 1763;

Articles IV and V of the Treaty of Versailles, 1783, together with the Declara-

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tions attached thereto (see Hertslet's "Commercial Treaties," vol. i, p. 237-245); and to—

Article XIII of the Treaty of Paris, 1814 (see Hertslet's "Treaties," vol. i, p. 253).

That Sir Thomas Sanderson was to request that we would take the papers transmitted with his letter into our consideration, and that we would favour your Lordship with our opinion as to whether the views indicated above as those which your Lordship was disposed to take upon the French contention were sound in international law, as applied to the particular circumstances of the case; or whether we considered that they might advantageously be modified or developed. That in the latter event your Lordship would be obliged for any suggestions or additions, either in the form of a Memorandum or otherwise, as was most convenient to ourselves, with which we might be good enough to favour you.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the views expressed by your Lordship, as stated in Sir Thomas Sanderson's letter to us of the 13th June, and in your Lordship's letter to M. Waddington of the 1st June, and that to Lord Lytton of the 10th June, are entirely sound in international law as applied to the case before us; and we do not feel it necessary to make any suggestion thereon or addition thereto.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

1.	Agreement between Great Britain and France	March 11,	1891.
2.	M. Waddington	March 11,	„
3.	To ditto	March 11,	„
4.	To the Earl of Lytton	March 11,	„
5.	M. Waddington .. ..(No. 160)	May 27,	„
6.	To ditto	May 28,	„
7.	Colonial Office	June 1,	„
8.	The Earl of Lytton..	June 2,	„
9.	M. Waddington .. ..(No. 192)	June 4,	„
10.	To the Earl of Lytton	June 7,	„
11.	Ditto .. ..(No. 180)	June 10,	„
	.. ..(No. 181)	June 10,	„

Memorandum by the Lord Chancellor.—(*Received June* 20.)

I HAVE read and entirely agree with the Report of the Law Officers herein. The matter is of the greatest importance as a precedent. It would introduce topics of perpetual disagreement among Powers, the internal constitutions of which varied, and unless the broad proposition is adhered to, that one Power has simply the right to call upon the other Power to fulfil its Treaty engagements, I do not know where the assumed right of dictation or even remonstrance would end.

House of Lords, June 19, 1891. (Signed) HALSBURY.

No. 41.

The Law Officers of the Crown to Lord Knutsford.

Royal Courts of Justice, June 17, 1891.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 13th instant, stating that he was directed by your Lordship to invite our early consideration of the accompanying documents:—

1. Copy of an Act passed by the Newfoundland Legislature for enforcing the French Fishery Treaties in the form in which the Governor reported that it had passed both Houses.

2. Draft of Instructions to be given to the naval officers on the coast in pursuance of that Act.

That the draft showed in black ink the suggestions of the Foreign Office, and in red ink the amendments proposed by the Admiralty, in both of which your Lordship concurred.

That Mr. Bramston was to request that we would be good enough to favour your Lordship with our opinion whether those draft Instructions were in themselves proper and sufficient, and whether they were in accordance with the Colonial Act.

That Mr. Bramston was to add that Her Majesty's ships would not proceed to the coast until instructions could be sent to the naval officers who were detained while waiting for them.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, the draft Instructions submitted to us, as amended, and including in those amendments the omission of paragraph (*a*) on p. 4, are proper and sufficient, and in accordance with the Colonial Act.

We desire to call attention to the fact that the Newfoundland Act just passed contemplates the Instructions being given by advice of Her Majesty's Council. This would appear to refer to the Privy Council.

The heading and title of the Instructions are sufficient.

We have, &c.
(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

Annex.

Orders and Instructions to the Naval Officers on the Coast of Newfoundland, given under the Powers vested in Her Majesty by the Newfoundland French Treaties Act passed in 1891 *by the Legislature of Newfoundland* (*as approved by the Law Officers*).

I.

THE most important duty intrusted to naval officers on the coast of Newfoundland is in relation to the French fishery, and their attention is called to the following Treaties, Conventions, and Acts of Parliament, &c., which bear upon that fishery, viz.:— **Treaties, Conventions, &c. Appendix No. 1.**

1. XIIIth Article, Treaty of Utrecht, 31st March (11th April), 1713, in vol. i, p. 236, Hertslet's Treaties.
2. Vth Article, Treaty of Paris, 10th February, 1763, in vol. i, p. 239, Hertslet's Treaties.
3. IVth and Vth Articles, Treaty of Versailles, 3rd September, 1783, and the Declarations of the respective Sovereigns of Great Britain and France attached thereto.
4. XIIIth Article of the Definitive Treaty of Peace between Great Britain and France, 30th May, 1814, in vol. i, p. 241, Hertslet's Treaties.
5. The *modus vivendi* agreed to between the British and French Governments for the fishing season of 1890, and renewed for the fishing season of 1891.
6. Laws and Regulations relating to fisheries, cap. 102, Consolidated Statutes of Newfoundland, 1872, and certain later Colonial Acts which can be obtained from the Colonial Government.
7. The Act passed in 1891 by the Colonial Legislature to secure till the end of 1893 performance of the above Treaties, and of the *modus vivendi*.

II.

When proceeding to St. John's, the Senior Officer is, unless otherwise ordered, to detach the officer next in seniority to himself to communicate with the Senior Officer of the French ships of war employed on the fishery, for the purpose of assuring him that it is the Commander-in-chief's anxious desire to prevent all encroachments on admitted rights, and all collisions between the fishermen of the two nations. **Co-operation with French authorities.**

2. The mission of the naval officers, so far as regards the French, is to be confined to ascertaining facts and maintaining good order. They are not to decide any questions which have arisen or may arise between the French officers and themselves respecting the interpretation of the Treaties; and it is desirable that in their intercourse with the French their duties should be carried out in as conciliatory and moderate a manner as possible. **General duties.**

3. In their dealings with British fishermen, as well as with those of other nations, they are to exercise a spirit of forbearance and moderation; bearing in mind that while they are to protect British subjects in the prosecution of their lawful trade it is equally their duty to prevent those subjects encroaching on the just rights of others.

4. On that portion of the coast of Newfoundland where the French enjoy rights of fishing, secured

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to them by the Treaty of Utrecht, 1713, and Definitive Treaty and Declarations of 1783, notwithstanding whatever doubts or whatever questions may from time to time have arisen as to the exact interpretation to be placed upon those rights, the naval officers will take especial care that the admitted rights of the French shall be maintained, and that British fishermen shall be prevented from interfering in any manner with the free enjoyment by the French fishermen of their rights of fishery.

And to this end, in case any British subjects shall fail to comply with the orders of the Commander of one of Her Majesty's ships, given with a view to preventing such interference, such Commander may compel any British subjects so refusing to depart from within the limits aforesaid, or from any place within those limits, together with any ship, vessel, or boat belonging to, or used by, such British subjects, and may take possession of any nets or other gear belonging to, or used by, such British subjects, and may retain the same for such period as may appear to him to be necessary to insure compliance with his orders.

The said portion of the coast extends from Cape St. John, passing to the north and descending by the west coast to Cape Ray, and may for purposes of brevity be described in correspondence as the "Treaty Shore," or "Treaty Coast."

Rivers. 5. The French have no right to fish in, or to bar any of, the rivers of Newfoundland; but in the event of any Frenchmen being found so engaged, the naval officers are to limit themselves to warning them that their proceedings are illegal, and protesting to the French Naval Commander against the continuance of such practices; at the same time reporting forthwith the circumstances which rendered it necessary for them to take action in the matter.

III.

Commission of Peace. Should the Governor request it, the Senior Officer may, subject to the approval of the Admiralty, accept Commissions of the Peace for himself, the officers in command of the ships under his orders, as also for the Senior Lieutenants of the respective ships.

IV.

French complaints. Special care should be taken that any complaint addressed to the Commander of one of Her Majesty's ships, on the part of the officers in command of French cruizers, should be immediately investigated, and the necessary action taken.

It is also desirable that two of Her Majesty's ships should cruize more especially between Canada Bay on the east, and Ingornachoix Bay on the west, to insure the prompt arrival of British authorities at any given spot where their presence may be required.

V.

Taking of bait by French. The French have no right to take bait, except on those parts of the coast where they enjoy rights of fishing, and they should be warned off, when attempting to do so, on any other part of the coast.

VI.

Enforcement of laws and Treaty rights. 1. All foreigners who exercise the right of fishing in British waters in common with Her Majesty's subjects are bound, in common with them, to obey the law of the country, including such colonial laws as have been passed to insure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto.

2. Except in so far as is provided for in these Instructions, the enforcement of the colonial laws must be left, as far as the exercise of rights on shore is concerned, to the colonial authorities, by whom Her Majesty's Government desire they shall be enforced with great forbearance.

The colonial laws relating to fisheries are to be found in the Consolidated Statutes of Newfoundland, or in the latter Acts referred to above.

3. The naval officers are to be very careful to abstain from dealing with cases which involve questions of Treaty rights to a greater extent than may be necessary to maintain order and prevent a breach of the peace, referring such cases at once to the Colonial Government and to Her Majesty's Government, using their discretion as to sending a duplicate of their official Report direct to the Secretary of the Admiralty in the event of the Senior Officer not being immediately accessible.

VII.

Modus vivendi. The naval officers are to give effect to the *modus vivendi* agreed to by the British and French Governments for the season of 1891, and the Commanders of Her Majesty's ships may give such orders and take such measures as they think necessary for that purpose, acting with patience and discretion in dealing with the questions which may arise between British and French subjects. And especially any of the said Commanders may compel any British subject to close any lobster factory which in his opinion is being worked contrary to the *modus vivendi*, and in case of refusal to comply with his orders may compel any British subject so refusing to depart from within the limits aforesaid, or from any place therein, together with any ship, vessel, or boat belonging to or used by such British subjects.

VIII.

Foreign interference illegal. Any interference with British subjects and property by foreign naval officers is illegal; and if, in any case, there should be any such interference, a remonstrance should be addressed to the officer exercising it, and the circumstance be immediately reported to the Commander-in-chief in the fullest manner for the information of Her Majesty's Government.

Appendix.

* * * * * * *

NEWFOUNDLAND FRENCH TREATIES ACT.

An Act, intituled "An Act for the purpose of carrying into effect Engagements with France respecting Fisheries in Newfoundland."

WHEREAS by Treaties and Declarations entered into and exchanged between the Kings of Great Britain and France certain engagements were made and declared relative to Newfoundland and the Islands of St. Pierre and Miquelon, and in relation to the fisheries on a part of the coast of Newfoundland, which Treaties and Declarations are as follows:—

Article XIII of the Treaty of Utrecht (1713), as follows:—

"The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Great Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up, within seven months from the exchange of the ratification of this Treaty, or sooner, if possible, by the Most Christian King, to those who have a Commission from the Queen of Great Britain for that purpose. Nor shall the Most Christian King, his heirs and successors, or any of their subjects, at any time hereafter, lay claim to any right to the said island or islands, or to any part of it or them. Moreover, it shall not be lawful for the subjects of France to fortify any place in the said Island of Newfoundland, or to erect any buildings there, besides stages made of boards and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish. But it shall be allowed to the subjects of France to catch fish, and to dry them on land, in that part only, and in no other besides that, of the said Island of Newfoundland which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence, running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton, as also all others, both in the mouth of the River St. Lawrence and in the gulf of the same name, shall hereafter belong of right to the French, and the Most Christian King shall have all manner of liberty to fortify any place or places there."

Articles V and VI of the Treaty of Paris (1763), as follows:—

"ARTICLE V.

"The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the Island of Newfoundland, such as it is specified in the XIIIth Article of the Treaty of Utrecht, which Article is renewed and confirmed by the present Treaty (except which relates to the Island of Cape Breton, as well as to the other islands and coasts in the mouth and in the Gulf of St. Lawrence); and His Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence on condition that the subjects of France do not exercise the said fishery but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said Gulf of St. Lawrence. And as what relates to the fishery on the coast of the Island of Cape Breton out of the said gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of 15 leagues from the coast of the Island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said gulf, shall remain on the foot of former Treaties.

"ARTICLE VI.

"The King of Great Britain cedes the Islands of St. Pierre and Miquelon in full right to His Most Christian Majesty, to serve as a shelter to the French fishermen; and his said Most Christian Majesty engages not to fortify the said islands, to erect no buildings upon them, but merely for the convenience of the fishery; and to keep upon them a guard of fifty men only for the police."

Articles IV, V, and VI of the Treaty of Versailles (1783), as follows:—

"ARTICLE IV.

"His Majesty the King of Great Britain is maintained in his right to the Island of Newfoundland and to the adjacent islands, as the whole were assured to him by the XIIIth Article of the Treaty of Utrecht, excepting the Islands of St. Pierre and Miquelon, which are ceded in full right by the present Treaty to His Most Christian Majesty.

"ARTICLE V.

"His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid Article of the Treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland in 50° north latitude; and His Majesty the

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King of Great Britain consents, on his part, that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north, and descending by the western coast of the Island of Newfoundland, shall extend to the place called Cape Ray, situated in 47° 50′ latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present Article, as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht.

"ARTICLE VI.

"With regard to the fishery in the Gulf of St. Lawrence, the French shall continue to exercise it, conformably to the Vth Article of the Treaty of Paris."

The following Declaration made by His Britannic Majesty upon the signing of the Treaty of Versailles:—

"The King, having entirely agreed with His Most Christian Majesty upon the Articles of the Definitive Treaty will seek every means which shall not only insure the execution thereof with his accustomed good faith and punctuality, and will besides give, on his part, all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

"To this end, and in order that the fishermen of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them upon the coasts of the islands of Newfoundland; but he will, for this purpose, cause the fixed settlements which shall be formed there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing-vessels.

"The XIIIth Article of the Treaty of Utrecht and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there. It shall not be deviated from by either party, the French fishermen building only their scaffolds, confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence.

"The King of Great Britain, in ceding the Islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations, and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel."

The following counter-Declaration of His Most Christian Majesty the King of France made at the same time:—

"The principles which have guided the King in the whole course of the negotiations which preceded the re-establishment of peace must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting by preventing, as much as possible, in the four quarters of the world, every subject of discussion and quarrel.

"The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the Islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

"As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two Sovereigns, upon this matter it is sufficiently ascertained by the Vth Article of the Treaty of Peace signed this day, and by the Declaration likewise delivered to-day by His Britannic Majesty's Ambassador Extraordinary and Plenipotentiary, and His Majesty declares that he is fully satisfied on this head.

"In regard to the fishery between the Island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the channel, and His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen."

Articles VIII and XIII of the Treaty of Paris (1814), as follows:—

"ARTICLE VIII.

"His Britannic Majesty, stipulating for himself and his allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the Colonies, fisheries, factories, and establishments of every kind which were possessed by France on the 1st January, 1792, in the seas and on the continents of America, Africa, and Asia, with the exception, however, of the Islands of Tobago and St. Lucia, and the Isle of France and its dependencies, especially Rodrigues and the Seychelles, which several Colonies and possessions His Most Christian Majesty cedes in full right and sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and sovereignty to His Catholic Majesty."

"ARTICLE XIII.

"The French right of fishery upon the Great Bank of Newfoundland, upon the coasts of the island of that name, and of the adjacent islands in the Gulf of St. Lawrence, shall be replaced upon the footing in which it stood in 1792."

Article XI of the Treaty of Paris (1815), as follows:—

"The Treaty of Paris of the 13th May, 1814, and the Final Act of the Congress of Vienna of the 9th June, 1815, are confirmed, and shall be maintained in all such enactments which shall not have been modified by the Articles of the present Treaty."

And whereas differences have arisen between Her Majesty the Queen and the Government of the Republic of France respecting the rights of the citizens of the Republic of France as to the catching and canning of lobsters on the said portion of the coast of Newfoundland and the erection of factories or buildings for that purpose, and an Agreement has been made between the High Contracting Parties for the submission to arbitration of the said differences, which Agreement is as follows:—

The Government of Her Britannic Majesty and the Government of the French Republic having resolved to submit to a Commission of Arbitration the solution of certain difficulties which have arisen on the portion of the coasts of Newfoundland comprised between Cape St. John and Cape Ray, passing by the north, have agreed upon the following provisions:—

1. The Commission of Arbitration shall judge and decide all the questions of principle which shall be submitted to it by either Government, or by their Delegates, concerning the catching and preparation of lobsters on the above-mentioned portion of the coasts of Newfoundland.

2. The two Governments engage, in so far as each may be concerned, to execute the decisions of the Commission of Arbitration.

3. The *modus vivendi* of 1890, relative to the catching and preparation of lobsters, is renewed purely and simply for the fishery season of 1891.

4. As soon as the questions relative to the catching and preparation of lobsters shall have been decided by the Commission, it may take cognizance of other subsidiary questions relative to the fisheries on the above-mentioned portion of the coasts of Newfoundland, and upon the text of which the two Governments shall have previously come to an agreement.

5. The Commission of Arbitration shall be composed—

(1.) Of three Specialists, or Jurisconsults, designated by common consent by the two Governments.

(2.) Of two Delegates of each country, who shall be the authorized channels of communication between the two Governments and other Arbitrators.

6. The Commission of Arbitration thus formed, of seven members, shall decide by majority of votes, and without appeal.

7. It shall meet as soon as possible.

Done at London, the 11th day of March, 1891.

And whereas the said High Contracting Parties have agreed to extend for the fishery season of 1891 the *modus vivendi* agreed to in 1890, which was as follows:—

The questions of principle and of respective rights being entirely reserved on both sides, the British and French Governments agree that the *status quo* shall be maintained during the ensuing season on the following bases:—

Without France or Great Britain demanding at once a new examination of the legality of the installation of British or French lobster factories on the coasts of Newfoundland, where the French enjoy rights of fishing conferred by the Treaties, it is understood that there shall be no modification in the positions ("emplacements") occupied by the establishments of the subjects of either country on the 1st July, 1889, except that a subject of either nation may remove any such establishment to any spot on which the Commanders of the two naval stations shall have previously agreed.

No lobster fisheries which were not in operation on the 1st July, 1889, shall be permitted unless by the joint consent of the Commanders of the British and French naval stations.

In consideration of each new lobster fishery so permitted, it shall be open to the fishermen of the other country to establish a new lobster fishery on some spot to be similarly settled by joint agreement between the said Naval Commanders.

Whenever any case of competition in respect of lobster fishery arises between the fishermen of either country, the Commanders of the two naval stations shall proceed on the spot to a provisional delimitation of the lobster fishery grounds, having regard to the situations acquired by the two parties.

N.B.—It is well understood that this arrangement is quite provisional, and shall only hold good for the fishing season which is about to open.

Be it therefore enacted by the Governor, Legislative Council, and House of Assembly in Legislative Session convened:—

1. In case Her Majesty, her heirs and successors, by advice of her or their Council, shall give orders or instructions to the Governor of Newfoundland, or to any officer or officers on that station, which she or they deem necessary and proper to fulfil the purposes of the said Treaties, Declarations, and Agreements, and to that end shall give orders and instructions to the Governor, or officer or officers aforesaid, to remove or cause to be removed any stages, flakes, train fats, or other works whatever, for the purpose of carrying on the fishery erected by Her Majesty's subjects on that part of the coast of Newfoundland which lies between Cape St. John, passing to the north and descending to the western coast of the said island, to the place called Cape Ray, and also all ships, vessels, and boats belonging to Her Majesty's subjects which shall be found within the limits aforesaid; and also in case of refusal to depart from within the limits aforesaid, to compel any of Her Majesty's subjects to depart from thence, any law, custom, or usage to the contrary notwithstanding; any acts done by the said

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Governor, or officer or officers, in pursuance of such orders or instructions as aforesaid, shall be lawful, and no action, suit, or other proceeding shall be brought or maintained in respect of the same.

2. In case Her Majesty, her heirs and successors, by advice of her or their Council, shall give orders or instructions to the said Governor, or officer or officers, which she or they deem necessary for the purpose of carrying out or enforcing the said *modus vivendi* during the fishery season of 1891, or any continuation thereof pending the arbitration aforesaid, and for the purpose of giving effect to the decision in said arbitration, any acts done by the said Governor, or officer or officers, in pursuance of such orders or instructions, shall be lawful, and no action, suit, or other proceedings shall be maintained in respect of the same.

3. If any person shall refuse, upon requisition made by the said Governor, or officers lawfully acting in pursuance of such orders or instructions as aforesaid, to conform to such requisition and directions as the said Governor or officers shall lawfully make or give for the purpose aforesaid, such persons so offending shall forfeit the sum of 200 dollars; provided always that every such suit or prosecution shall be commenced within one year from the commission of such offence.

4. This Act may be cited as "The Newfoundland French Treaties Act," and shall continue in force only until the end of 1893, and no longer.

No. 42.

The Law Officers of the Crown to Lord Knutsford.

My Lord, *Royal Courts of Justice, July* 2, 1891.

WE were honoured with your Lordship's commands signified in Mr. Bramston's letter of the 23rd ultimo, stating that he was directed by your Lordship to invite our consideration of the following matter.

That we were doubtless aware that it had been proposed that questions arising on the coast of Newfoundland in connection with the French Fishery Treaties should in future be heard and determined judicially. instead of being left, as hitherto, to be dealt with by naval officers acting under instructions from Her Majesty; and that discussions were in progress with the Delegates as to provisions of an Act to be passed by the Newfoundland Legislature for establishing the necessary judicial machinery.

That in the course of those discussions a question had arisen as to whether "The Territorial Waters Jurisdiction Act, 1878," affected the competency of the Colonial Legislature to deal with the subject, and, if so, to what extent.

That it had always been considered that the power to make laws for the peace, order, and good government of a Colony, which every Colonial Legislature possessed, included the power of legislating in respect of matters occurring within the territorial waters of the Colony; as, for instance, the enforcement of local laws relating to customs or illicit trade, subject to the condition imposed by "The Colonial Laws Validity Act, 1865," section 2, that any colonial law which was repugnant to any Act of Parliament extending to the Colony should, to the extent of such repugnancy, be void and inoperative.

That it was therefore apprehended that it was competent to a Colony to pass a law declaring that any specific act occurring on board a ship, whether British or foreign, within the colonial territorial waters, was an offence against the law of the Colony, and punishable accordingly, provided that such law were not repugnant to any Act of Parliament extending to the Colony.

But that "The Territorial Waters Jurisdiction Act, 1878," which specifically extended to all Colonies, declared that offences which, if committed within the body of a county in England, would be punishable on indictment according to the law of England for the time being in force, were, when committed on the open sea within the territorial waters of Her Majesty's dominions, offences within the jurisdiction of the Admiral, and might be punishable accordingly; that was to say, that they would in a Colony be dealt with by the Supreme Court under the Act 12 & 13 Vict., cap. 96, and that the offenders, if convicted, would be punishable as provided in the 2nd section of that Act.

That Mr. Bramston was to inclose copy of a Memorandum on the subject drawn up by Mr. Jenkyns, the Parliamentary Counsel, and to observe that, as no Bill could be introduced this Session, it was not desired at present to trouble us to examine the draft Bill attached to the Memorandum, but only to ascertain our opinion as to the effect of "The Territorial Waters Jurisdiction Act, 1878," upon the competency of the Newfoundland Legislature.

That Mr. Bramston was, however, to observe that the Memorandum did not specifically touch one point to which he was to invite our attention. That in order to

secure the performance of the French Treaties the Newfoundland Legislature would be asked to create a special Court to deal with any breach of those Treaties committed on shore, or in territorial waters. That it might be an act, *e.g.*, destroying nets below low-water mark, constituted an offence which would in England be punishable on indictment, and therefore triable by the Supreme Court in pursuance of "The Territorial Waters Jurisdiction Act, 1878." But that if it were sought to justify the act as being done in vindication of Treaty rights which were alleged to be infringed by the net being set in an improper place, that would seem to be a question within the jurisdiction of the special Court which had to decide Treaty matters, and might thus be taken to have at any rate concurrent jurisdiction in the matter. That if that were so, there would seem to be no objection to colonial legislation in the direction proposed.

That Mr. Bramston was accordingly to request us to take the papers into our consideration and to advise your Lordship whether, in our opinion, it was competent to the Legislature of Newfoundland to pass an Act providing for the trial, without the consent of the Governor or in a summary manner, of offences which, under the Imperial Act, would be triable by the Supreme Court of the Colony if committed within the territorial waters—

(*a.*) On board a British vessel;

(*b.*) By a foreigner on board a foreign vessel.

That Mr. Bramston was to add that your Lordship would be glad to be favoured with any observations upon the subject generally which we might be able to make for the assistance of Her Majesty's Government in dealing with the matter.

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in our opinion, it is not competent to the Newfoundland Legislature to pass an Act under which offences within the provisions of the Imperial Act of 1878 may be tried without the consent of the Governor or in a summary manner, as such an Act would be inconsistent with the provisions of the Imperial Statute. It is, however, competent to the Colonial Legislature to provide by law for the arrest and trial, by summary process, of persons committing any breach of Regulations contained in local Statutes with respect to fishery, or the taking or sale of bait, or other matters of that description—whether the act be committed on board a British or a foreign vessel engaged in the fishery or the trade connected therewith.

The malicious destruction of a net below low-water mark would be an indictable offence, and within the provisions of the Imperial Statute, but the placing a net in an improper place might be a breach of local Regulation, and a Colonial Statute might provide for the removal of the net and the punishment of the person so improperly placing it.

We have, &c.

(Signed) RICHARD E. WEBSTER.
EDWARD CLARKE.

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CONFIDENTIAL.

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TURKEY.

Selection of Law Officers' Reports relating to the Navigation of the Inland Waters of Turkey; Question of Coasting Trade.

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Selection of Law Officers' Reports relating to the Navigation of the Inland Waters of Turkey; Question of Coasting Trade: 1841 to 1910.

No. 1.

Queen's Advocate to the Earl of Clarendon.

My Lord, *Doctors' Commons, November* 27, 1841.

I AM honoured with your Lordship's commands signified in Viscount Canning's letter of the 25th instant, stating that he was directed to transmit to me two despatches from Her Majesty's consul-general in Egypt and from Her Majesty's consul at Alexandria respecting an order of the pasha which has lately been made public, granting permission to foreigners to build boats for their own use, and to carry the produce of the country in these boats on the Nile, and to request that I would, at my earliest convenience, report upon the subject of these despatches, and especially upon the points adverted to in Consul Stoddart's protest, namely, as to the bearing of the treaties between Austria and the Porte and between Russia and the Porte upon the question of free navigation claimed by him; and whether, supposing those treaties to confer certain benefits upon boats which, according to the navigation laws of those Powers, are considered to be Austrian or Russian boats, boats built by British subjects in the dominions of Turkey, can, under the provisions of the British navigation laws, be so far considered as British boats as to entitle them to the privileges which the treaties in question confer upon Austrian and Russian boats.

I am also honoured with Viscount Canning's note of the 26th instant, transmitting the enclosed letter from the Board of Trade upon the regulations for the navigation of the Nile in private boats, referred to in Colonel Barnett's and Mr. Stoddart's despatches transmitted to me on the 25th, and Viscount Canning is pleased to add that your Lordship would be glad to be enabled to send out instructions to Egypt on this matter by the mail of the 30th instant.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report that the letter from the Board of Trade* appears to me to comprise full and explicit answers to the several points proposed for my consideration: and, as I entirely concur therein, I humbly submit that instructions may be sent out to Egypt accordingly.

I have, &c.
J. DODSON.

No. 2.

Queen's Advocate to Lord Malmesbury.

My Lord, *Doctors' Commons, December* 27, 1852.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 22nd instant, stating that he was directed to transmit to me a despatch from Her Majesty's chargé d'affaires at Constantinople respecting a prohibition against small foreign steam-boats plying on the Bosphorus;† and to request that I would take this subject into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the subject into consideration, and have the honour to

Report—

That I am not aware of any treaty stipulations authorising either British or foreign vessels to carry on a coasting trade or to convey passengers coastwise in Turkey; if any such exist, I would request a reference thereto.

I am not aware what are the "règlements du pays" stated by the Turkish Government to be violated by the steamers; it is, however, obvious that the reasons stated for the suppression of the steamers only show the necessity for regulating them.

* The views of the Board of Trade are summarised in No. 4 (memorandum by Mr. Hertslet).

† Colonel Rose's despatch, No. 152.

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If, however, the right or privilege of carrying passengers in steamers within the Turkish dominions has been either "granted" to or "suffered to be enjoyed by" the ships and vessels of other foreign Powers, in other instances, and for many years, as Colonel Rose states, there appears to me a fair ground for contending that, under the 1st article of the treaty of Balta Liman, the same right must be conceded to British subjects, and that British subjects must be placed, with regard to this right or privilege, on terms of strict equality with foreigners, whether at Constantinople or elsewhere.

As a mere matter of local police or public safety and convenience, the absolute suppression of all these steamers cannot be necessary; the enforcing regulations as to any trade or any right is widely different from its suppression or abrogation.

I have, &c.

J. D. HARDING.

No. 3.

Queen's Advocate to Lord John Russell.

My Lord, *Doctors' Commons, January* 13, 1853.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 3rd instant, stating that, with reference to that part of my report of the 27th December, in which I stated that I was not aware of any treaty stipulations authorising either British or foreign vessels to carry on a coasting trade or to carry passengers coastwise in Turkey, and requested that if any such existed I might be referred to them, Mr. Addington was directed by your Lordship to call my attention to the 31st, 41st, and 51st articles of the British Capitulations (Hertslet, vol. ii), the first and last of which appear to provide for the transport of goods by English merchants from one port of Turkey to another; and the second of which appears equally to sanction and provide for the transport in English ships from one port of Turkey to another not only of pilgrims, but of other Turkish passengers.

Mr. Addington also further called my attention to the 3rd additional article of the treaty of 1838, in which specific reference appears to be made to a recognised practice of transporting goods the property of British subjects from one port of Turkey to another.

And with reference to the general provision in the first article of the same treaty, which confers upon British subjects the privileges granted to the subjects of the most favoured nation, Mr. Addington also further called my attention to the French Capitulations (Wenck, t. i, p. 540), and specifically to the 75th article thereof, in which provision is made in regard to the embarkation of goods by Turkish subjects on board French vessels for the purpose of such goods being transported from one port of the Turkish Empire to another. Mr. Addington also further called my attention to the stipulations of the commercial treaty between Austria and the Porte, signed at Passarowitz on the 27th July, 1718 (Dumont, t. viii, p. 528), to the 6th article of the "Sened" issued by the Porte in favour of Austrian commerce on the 24th February, 1784 (Martens, t. ii, p. 511), to the 1st article of the Commercial Treaty between Turkey and Russia of the 21st June, 1783 (Martens, t. ii, p. 373), and to the 25th article of the Venetian Treaty with the Porte of the 21st July, 1718 (Lamberty, t. x, p. 31), and Mr. Addington was pleased to request that I would again consider the subject referred to in Colonel Rose's despatch No. 152 and report my opinion—

1. Whether or no Her Majesty's Government can claim for British vessels a right to be engaged in trading between one port of Turkey and another?

2. Whether, independently of any claims founded on usage and sufferance on the part of the Porte, the 41st article of the British Capitulations does or does not confer upon British vessels a right to convey Turkish passengers and passengers generally between one port of Turkey and another? and

3. Whether, assuming that either by that article or by long-continued sufferance the Porte is precluded from objecting generally to the transport of passengers in British vessels from one port of Turkey to another, there is anything peculiar in the character of the channel of the Bosphorus to justify the Porte in its claim to make a distinction in regard to it?

I have accordingly again considered the various references to which my attention is directed by Mr. Addington and the subject referred to in Colonel Rose's despatch No. 152, and have the honour to

Report—

1. That Her Majesty's Government can claim for British vessels a right to be engaged generally in trading between one port of Turkey and another.

2. That, independently of any claims founded on usage and sufferance on the part of the Porte (by which I understand "in the absence of any usage"), the 41st article of the British Capitulations does not appear to me to confer on British vessels a right to convey Turkish passengers and passengers generally between one port of Turkey and another. It, however, recognises the actual existence at the date of the Capitulations of such a *right*,* at least to the extent therein set forth, and thereby prevents the Porte from denying that any such right or usage ever had any existence; but unless supported or explained by subsequent usage, it does not of itself alone, in my opinion, confer an absolute and unqualified general right throughout the Turkish dominions.

3. Even if by long-continued sufferance the Porte is precluded from objecting generally to the transport of passengers in British vessels from one port of Turkey to another, yet there are, in my opinion, such peculiar circumstances in the character of the channel of the Bosphorus as may justify the Porte in its claim to make a distinction in regard to it.

Notwithstanding such circumstances, however, if the Porte has in effect granted the right or privilege in question to the subjects of other nations, or suffered them to enjoy it within the Bosphorus, Her Majesty's subjects will be entitled to claim the same right or privilege by virtue of the 1st article of Balta Liman of 1838.

I have,

J. D. HARDING.

No. 4.

Memorandum on the right of Foreigners to Navigate the Nile and the Mahmoudieh Canal, under their own Flag.

AN order was issued by the Pasha of Egypt in September [? October], 1841, granting permission to foreigners to build boats for their own use, and to carry the produce of the country in those boats on the Nile and the Mahmoudieh Canal, on condition that they were manned by natives and carried the Egyptian flag. Hertslet's Treaties, vol. x, p. 602, Notification, October 12, 1841.

In transmitting home this order Colonel Barnett, then consul-general in Egypt, stated that he had urged upon the pasha the necessity of giving up the monopoly of transport which he had so long maintained on the Nile and the canal to the great detriment of British merchants, and had urged upon His Highness the necessity of opening the inland navigation to foreigners, and that he had at length, after great reluctance on the part of the pasha, elicited a promise from him, "that on his arrival at Cairo," where he was then going, "he would give him a favourable answer." Colonel Barnett, No. 22, October 18, 1841.

Colonel Barnett observed that he did not feel confident that he could have insisted on the boats belonging to British subjects being allowed to bear the national flag; but that this appeared to him to be a matter of less importance so long as the crews and cargoes were protected.

This despatch was approved by Her Majesty's Government. To Colonel Barnett, No. 5, November 29, 1841.

Mr. Stoddart, Her Majesty's consul at Alexandria, also sent home a copy of the Pasha's order in the same month, and remarked that under it British merchants holding boats would be obliged to form partnerships with Arab traders or Arab reis (captain of boats), in whose names all operations on the Nile were in future to be conducted; that they could in future only sail under the Egyptian flag, whereas hitherto the boats of foreign proprietors had been allowed to hoist their national colours; that the imposing a tonnage duty on British boats would operate as a new internal duty, and therefore be contrary to the treaty of commerce of August 1838, and he stated that he had in consequence considered it his duty formally to protest against the order in question, grounding it upon the treaty between Great Britain and Turkey of the 16th August, 1838, the treaties between Austria and Turkey of 1718, 1784, and 1791, and between Russia and Turkey of 1783 (see Annex); and that he had claimed for British subjects the free and unrestricted navigation and commerce of all the seas, rivers, canals and waters of the Ottoman Empire, subject to the regulations and duties imposed by the treaty of commerce of 1838, and to no other restrictions or duties whatever. Mr. Stoddart, No. 13, October 20, 1841.

* There is a note in the MS. suggesting that the Law Officers meant to say "practice" not "right."

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To Board of Trade, November 17, 1841.

Board of Trade, November 26, 1841.

These despatches having been referred to the Board of Trade, their Lordships replied that they were of opinion that, by the order of the pasha, increased facilities weregiven for the transit of goods; that as the provisions of the order were confined to boats built in Egypt by foreigners, for the purpose only of navigating the Nile the manning of those boats with natives, and their carrying the Egyptian flag constituted, no violation of treaty unless British subjects were placed, which they were not, on a less favourable footing than the subjects of any other Power; but that should the pasha grant greater privileges and immunities to foreign subjects than to those of Her Britannic Majesty, Her Majesty's Government might then claim the like privileges for British subjects; that the treaty between Great Britain and Turkey of 1838, and the treaties between Austria and Turkey and Russia and Turkey had no bearing whatever upon the question of navigation by boats *built in Egypt*, and navigating the Nile and Mahmoudieh Canal. With regard to the privilege of navigation to be claimed by British ships under treaties with foreign States, their Lordships remarked that no boat or other vessel built in Egypt, although by British subjects or with British capital, would be deemed a British vessel, and entitled as such to claim the privileges enjoyed by British vessels.

Queen's Advocate, November 27, 1841.

This opinion was approved by the Queen's Advocate, to whom the question was referred.

To Consul Stoddart, No. 7, November 29, 1841.

The conduct of Consul Stoddart in protesting against the order of the pasha was entirely disapproved, and he was informed that Her Majesty's Government did not consider the treaties between Austria and Turkey, and between Russia and Turkey, quoted by him, to apply to boats built in Egypt by foreigners; that they saw nothing in the regulations which could be construed as placing British snbjects on a less favourable footing than the subject of any other Power.

Mr. Bankhead, No. 61, December 17, 1841.

It appears from a despatch of December 1841 from Mr. Bankhead that the Austrian consul-general in Egypt also protested against the order of the pasha, and that he rested his protest upon the right granted by the Porte to Imperial vessels to enter the rivers in the Sultan's dominions with their own flag; but Mr. Bankhead remarked that, as the mouths of the Nile were only navigable for small craft, and were never entered from the sea by merchant-vessels, no violation of the stipulations had taken place, the canal between Alexandria and the Nile clearly making it an internal navigation.

The Austrian Internuntio at Constantinople approved the conduct of the Austrian consul-general in protesting against the order of the pasha. No further correspondence appears to have passed upon the subject until October 1844, when a letter was addressed by the India Board to the Secretary of State, enclosing an application from the Peninsular and Oriental Company, requesting the good offices of Her Majesty's consul-general in Egypt with the Egyptian authorities to aid the company's agent in Egypt in obtaining permission for a new steam-vessel belonging to the company (the "Delta") to navigate the Nile, that vessel being destined to accelerate the transmission of the mails; but it was not considered advisable to comply with the request, as the negotiation with the Egyptian Government for the transit of the mails through Egypt was then pending.

India Board, October 5, 1844.

P. and O. Company, November 20, 1844.

On the 20th November, 1844, the Peninsular and Oriental Company forwarded to the Foreign Office a memorandum of a conversation which had passed between their agent in Egypt and Artin Bey, from which it appeared that the Egyptian Government refused to allow the "Delta" and other English steamers to navigate the Nile, as it was its intention to take the transit into their own hands, but that passengers would still be permitted to travel as they pleased, employing the boats and camels of the country.

P. and O. Company, January 8, 1845.

A memorandum was in consequence delivered by the Peninsular and Oriental Company to the Secretary of State, stating the grounds upon which they considered they had a right to navigate the Nile with their own vessels, and requesting that in any future postal arrangement with the pasha no such monopoly as that claimed by His Highness would be recognised by Her Majesty's Government; that the right to navigate the Nile for the purpose of transit of goods and passengers to and from India and China, already acquired by the Peninsular and Oriental Company, would be supported by Her Majesty's Government; but no remonstrance appears to have been addressed by the British Government to the Turkish or Egyptian Governments upon the subject.

Mr. Murray, No. 1, November 4, 1846.

Mr. Murray, His Majesty's agent and consul-general in Egypt, in a despatch to the Secretary of State of the 4th November, 1846, stated that the pasha was guided in

his negotiation respecting the transit of the Indian mails partly by his own shrewdness and still more by the counsels of his French advisers; that his policy was to keep the communication between England and India entirely under his own control, and to prevent England from obtaining any solid or permanent footing within his dominions; that it was with the same view that he had forbidden the Peninsular and Oriental Company to add a third steamer to the two they then had on the Nile; and that at length the pasha had bought that vessel (the "Delta") from the company, and was in treaty for the purchase of the two remaining steamers; and Mr. Murray then enquired whether the consequent removal of the British flag from the Nile met with the approval of the British Government.

In a subsequent despatch, Mr. Murray stated that the removal of the British flag from the Nile would prove extremely detrimental to British interests in that quarter.

Mr. Murray, No. 4, January 3, 1847.

Mr. Murray was informed, in reply to these despatches, that the Peninsular and Oriental Company had agreed to sell their steamers on the Nile before Her Majesty's Government were able to advise them not to do so, and that it was the wish of the British Government to maintain as far as possible the employment of British capital and energy in carrying out the communications with India through Egypt.

To Mr. Murray, No. 4, February 8, 1847.

All the boats of the Peninsular and Oriental Company were sold to the pasha on the 1st February, 1847.

Enclosure 5 in letter from East India House, February 1, 1847.

It is stated, in a letter from the Peninsular and Oriental Company to the directors of the East India Company, that the Peninsular and Oriental Company had employed and navigated their vessels in Egypt under the British flag under firmans or licences granted by the pasha for specified vessels, but that the pasha had never conceded to them the right of navigation upon the Nile.

P. and O. Company, February 12, 1847, Enclosure 4.

This letter was transmitted to Mr. Murray, in acknowledging the receipt of which Mr. Murray expressed an opinion that the views of the Peninsular and Oriental Company respecting the navigation of the Nile were erroneous, and that the British right to navigate the Nile, under their own flag, according to the provisions of the treaties between Great Britain and Turkey were, in his opinion, clear and undoubted, and he quoted the treaties between Austria and Turkey of 1718, 1784, and 1791, between Russia and Turkey of 1783, and the treaty with Great Britain of 1838 (see Annex), in support of that opinion, and added that the firman ordering the execution of the treaty with Austria of 1784 was addressed to the Governor of Egypt, and that Egypt was expressly named in the treaty of 1838 as one of the possessions of the Ottoman Empire to which the regulations established in that country were to be applicable.

To Mr. Murray, No. 6, February 24, 1847.

Mr. Murray, No. 15, March 17, 1847.

This despatch was also referred to the Queen's Advocate, who replied that he had nothing to add to his report of November 1841, in which he stated that he coincided with the view taken of the question by the Board of Trade.

Queen's Advocate, April 12, 1847.

In June 1847 Mr. Murray forwarded to Lord Palmerston a full statement of the system of transit of passengers, letters, &c., through Egypt, and drew his Lordship's attention again to the all-important question of the navigation of the Nile under the British flag. He stated that it was a privilege long enjoyed and exercised by the Europeans there, and which would have been exercised in a similar manner by the British had they not made the grievous error of asking it as a favour on one occasion, and acquiesced in its refusal on another; that he had reason to believe that Prince Metternich and the Austrian Cabinet considered the right of Austrian subjects to navigate the Nile under their own flag as clearly established under the "Sened" of 1784, and that they were determined to maintain that right whenever called upon by the interests of their commerce to do so; and he reminded his Lordship that the Austrian consul-general formally protested against the order of September 1841, which protest was approved and confirmed by the Austrian Ambassador at the Porte.

Mr. Murray, No. 32, June 6, 1847.

Mr. Murray added that Austrian vessels under their own flag were then plying between Damietta and Boulac (the port of Cairo); and observed that the question was one of vital importance to the interests of England.

Mr. Murray transmitted home in the same despatch a report from Consul Walne on the question of the transit throught Egypt, in which Consul Walne stated that when merchants sent goods by the ordinary means of conveyance afforded by the country carriers, whether on the desert or the Nile, the custom-house authorities offered obstacles tending to render the transmission by the "transit administration" indispensable; and he enumerated as one of the *desiderata* for the improvement of the transit "the navigation of the Nile by steam-boats, if possible, under European flags,

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but if that could not be effected consistently with existing treaties, then under the Ottoman flag in the same way as was then practised with sailing-boats built in the country, being the recognised property of European residents as well as natives."

To India Board, August 12, 1847.

In August 1847 a letter was addressed by the Foreign Office to the India Board, stating that Lord Palmerston was of opinion that in consequence of the withdrawal of the Peninsular and Oriental Steam Company's vessels from the navigation of the Nile and of the Mahmoudieh Canal, injury had been sustained by British interests in connection with India.

India Board, August 30, 1847.

The Court of Directors stated, in reply, that having taken the subject again into consideration, they were still of opinion that it was not expedient for the East India Company to provide steamers for the navigation of the internal waters of Egypt.

To Mr. Murray, No. 27, August 31, 1847.

Mr. Murray, No. 54, September 30, 1847.

This reply was forwarded to Mr. Murray, who expressed his opinion that the Pasha, when he bought up the Peninsular and Oriental Company's steamers, did not view the question merely as one of money, but that he wished to get the English flag off the Nile; and that he believed the British Government would, before many years were passed, see cause to regret the abandonment of a privilege which might easily have been maintained by usage, but the renewal of which it would be difficult to obtain.

E. HERTSLET.

Foreign Office, September 23, 1856.

ANNEX.

The following are extracts from the treaties referred to in the preceding correspondence, as bearing upon the question of the navigation of the Nile and the Mahmoudieh Canal:—

"Turkish Treaties," octavo, 1783 p. 81, in Latin.

1. Treaty between Austria and Turkey, signed at Passarowitz, the 27th July, 1718:

"Article 1. There shall be a free and universal commerce by rivers, land, and sea between the subjects of the Roman and Ottoman subjects.

"All ships sailing under the flag or colours, and furnished with Royal Roman licences, may freely enter the ports subject to the Turkish Empire, mutually trade therein," &c.

2. The treaty between Russia and Turkey of the 21st June, 1783:

Ibid, p. 487.

"Article 1. La Sublime Porte promet entièrement à tous les sujets russes en général de naviguer librement, et d'exercer leur commerce dans tous ses États, tant par terre que sur les mers, eaux, et sur le Danube, et partout où la navigation et le commerce pourront convenir aux sujets russes."

Martens and Cussy, vol. i, pp. 320–321. Turkish Treaties, octavo, 1783, pp. 116–117 (in German).

3. "Sened" in favour of Austrian subjects in the Ottoman Empire, the 24th February, 1784:

"Article 3. Les sujets et marchands allemands jouiront aussi, tant à l'importation de toutes les marchandises qu'à l'exportation de celles, qui, comme il a été ci-dessus, ne sont pas du nombre des défendues, ainsi qu'à la vente et à l'achat d'une liberté pleine et entière."

"Article 4. Pour prévenir tout doute et soupçon qui pourraient naître aux commandants, magistrats et employés des provinces ottomanes, sur le commerce par mer et par les rivières, la Sublime Porte déclare qu'en vertu des traités il est permis aux sujets et marchands Impériaux munis de leurs passeports d'aller et venir librement par mers et rivières, et exercer le commerce dans tous les États et provinces de l'Empire ottoman; et qu'ils peuvent aussi, dans leurs voyages par terre, par mer et sur les rivières où ils le trouveront convenable, aborder, décharger leurs marchandises, et charger de celles qui ne sont pas défendues, en payant les droits qu'ils doivent acquitter."

"Article 6. Les sujets et marchands Impériaux pourront librement, et sans que l'exception insérée dans le dit Traité de Commerce de Passarowitz puisse être d'aucun empêchement, passer pour cause de commerce des rivières à la mer, et *vice versâ*, avec navires, pavillon, et équipages allemands," &c.

"Art. 7. Le transit par les côtes, canaux, détroits, de la domination ottomane, et

nommément par le canal et la Mer Noire, des sujets et marchands Impériaux venant par mers et rivières, sur pavillon Impérial, des provinces allemandes, pour passer à des cours étrangères, ou venant des cours étrangères, pour se rendre aux provinces allemandes, sera libre et exempt de tout droit quelconque," &c.

4. Treaty between Austria and Turkey, signed at Sistovo, 4th August, 1791:

"Turkish Treaties," octavo, 1783, p. 126.

"Article 3. La Sublime Porte ottomane renouvelle et confirme tels quels, dans le sens le plus strict et dans toute leur étendue, sans jamais rien faire, ni souffrir qu'il soit rien fait, au contraire, le "Sened" ou Acte obligatoire du 24 février, 1784, en faveur du libre commerce et navigation des sujets Impériaux et Royaux sur toutes les terres, mers et fleuves de la Dominion ottomane," &c.

Ibid., p. 277.

5. Treaty between Great Britain and Turkey of the 16th August, 1838:

"Article 1. All rights, privileges, and immunities which have been conferred on the subjects and ships of Great Britain by the existing capitulations and treaties, are confirmed now and for ever, except in as far as they may be specially altered by the present convention.

"All rights, privileges, and immunities which the Sultan now grants, or may hereafter grant, to the ships and subjects of any other foreign Power, or which may suffer the ships and subjects of any other foreign Power to enjoy, shall be equally granted to and exercised and enjoyed by the subjects and ships of Great Britain.

"Article 6. It is agreed by the Turkish Government that the regulations established in the present convention shall be general throughout the Turkish Empire, whether in Turkey in Europe, Turkey in Asia, Egypt, or other African possessions belonging to the Sublime Porte."

No. 5.

Queen's Advocate to the Earl of Clarendon.

My Lord, *Doctors' Commons, October* 13, 1856.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th September ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Agent and consul-general in Egypt on the subject of an exclusive privilege of towing on the Nile and canals of Egypt for the space of fifteen years, conceded by the Viceroy to an Egyptian Towing Company,* together with a memorandum† drawn up in the Foreign Office on the right of foreigners to navigate the Nile and the Mahmoudieh Canal under their own flag,‡ and to request that I would take these papers into consideration, and report to your Lordship at my early convenience any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to

Report—

That with reference to the objections of some of the British merchants to the establishment of the company, I observe that Consul Bruce states:—

1. That the objectors form a very small portion of the commercial community.
2. That the increased lock dues at Atfeh (of which they complain) will only be leviable during the three months of low Nile, and that they will be more than compensated by avoiding the charges of transhipment.
3. That the Arab boatmen have hitherto enjoyed a pernicious monopoly of transport.

As far therefore as I can form any opinion in the absence of any local information the consul sufficiently answers the objections of the merchants, and there can be little doubt but that if the company prospers, the general interests of commerce will derive great benefit from its operations.

* Mr. Bruce, No. 38, August 30, 1856.

† Memorandum, September 23, 1856, in MS. volume, Turkey, Cat. No. 1338.

‡ No. 4.

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With reference to the question of the right of foreign nations to navigate the Nile under their own flags as derived from the stipulations of treaties, I have to observe that it seems to result from the Foreign Office memorandum herewith transmitted.

Firstly, that as regards the British flag, this right can only be claimed under the treaty with Turkey, the 16th August, 1838, on the ground that the Sultan has "granted" it to, or "suffered it to be enjoyed by," the ships and subjects of some other foreign Power, and this appears not only not to have been done, but to have been studiously avoided by the Egyptian Government, and not to have been insisted on or exercised by Great Britain. Her Majesty's Government is therefore not at present in a position actually and immediately to claim this right.

Secondly, that with respect to the treaties relied upon, if the foreign Governments in question had intended to have secured for their ships, in addition to their right to enter the Nile from the sea and to leave it for the sea, the more special and peculiar right (in derogation of the ordinary law and usage of nations) to carry on the internal trade upon that river (as, for instance, that from Cairo to the first cataract and back again), it would have been natural that this special and peculiar right should have been clearly and expressly mentioned in the treaties, more particularly as the Danube is specially mentioned in article 7 of the treaty between Turkey and Russia, 1783; in the absence of any such mention of it, the Egyptian Government may fairly argue "*expressio unius est exclusio alterius.*"

Thirdly, that at all events since 1841 [when the "order of the pasha" of that date must have called the attention of foreign Governments to the subject], this right has never, as a matter of fact, been exercised by the flag or subjects of any nation, generally and commercially. Indeed, I rather infer that it has never been so exercised at any time.

I remark Consul Stoddart's and Mr. Murray's statements, which appear to be at variance with this view; but I presume that in these cases either a firman was issued or there existed some special and individual distinction. The practice (for instance) adopted by travellers, of hoisting their national flags on their (hired Egyptian) pleasure boats cannot affect the question; and an occasional or individual instance will not be material. It appears from Consul Barnett's statements that up to 1841 the pasha had exercised a monopoly of the navigation of the Nile, and that Consul Barnett then "felt confident that he *could have insisted* on the boats belonging to British subjects being allowed to bear the national flag." This right, then, was not insisted on or exercised by British subjects, and was not, I presume, exercised by those of other nations, or Consul Barnett would have said so. If the right has never been exercised generally and commercially by any nation, this fact is adverse to its existence under treaties dated in 1783 and 1791.

Fourthly, that Consul Stoddart's formal protest and claim to this right, made in 1841 immediately upon the issuing of the pasha's order, and founded upon the treaties, was officially disapproved of by Her Majesty's Government; and although the matter was again and strongly urged upon the attention of Her Majesty's Government by Mr. Murray in 1846 and 1847, and carefully considered, yet the right was never claimed or pressed, but, on the contrary (if it ever existed), has been [in effect] waived or abandoned, at all events from 1841 until now, by Great Britain, advisedly, and with full knowledge of the subject.

Fifthly, I concur with my predecessor in thinking that the right in question does not result by necessary implication from the treaties between Turkey, Austria, and Russia cited in the memorandum.

Sixthly, should the Government of Egypt grant to the subjects or ships of any nation generally and indiscriminately the right in question, or suffer them thus to exercise it, then Her Majesty's Government may insist upon it in favour of British subjects under articles 1 and 6 of the treaty with Turkey of 1838.

Lastly, in the present position of this question, I would respectfully suggest to your Lordship that it would not be advisable to address any communication to the Egyptian Government on the subject of the Steam Towing Company, or to appear to take any formal notice of its existence.

I have, &c.
J. D. HARDING.

No. 6.

Queen's Advocate to the Earl of Clarendon.

My Lord, *Doctors' Commons, September* 8, 1857.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th August instant, stating that he was directed to transmit to me the accompanying documents which have been received from parties interested in Egyptian trade complaining of the monopoly granted by the Viceroy to the Egyptian Towing Company on the Nile and Mahmoudieh Canal.

Mr. Hammond was also pleased to transmit the correspondence which has passed with Her Majesty's acting consul-general in Egypt on that subject; and to request, with reference to my report of the 13th October last, that I would take these, together with the former papers, into consideration and inform your Lordship what answer it would be right and proper to return to the memorialists.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to

Report—

That I do not discover in the memorial or accompanying papers any new or important matter calculated to alter the opinion which I expressed on this subject in my previous report of the 13th October, 1856.

I observe, however, that Consul Green (in his despatch No. 25) and that M. de Hautefeuille and another (anonymous) French jurisconsult agree with that opinion, or at least have arrived, although by different methods, at the same conclusion in substance.

The memorial of Messrs. Barker and Co. complains (1) of the exclusive privilege granted to the existing Egyptian Steam Towing Company; (2) of the increased tolls levied by that company on goods passing by the Mahmoudieh Canal; and the communication from Mr. Isaac Butt appears to be in the nature of an argument in support of the memorial.

With reference to the first point, I can only suggest to your Lordship that the proper answer will be "that your Lordship can see no sufficient legal ground for contending that the exclusive privilege of towing by steamers granted to the company is at variance with treaty stipulations, with international law, or with the common usage or practice of nations; and that your Lordship sees no sufficient ground for contending that Her Majesty's subjects are at liberty, without the permission of the Egyptian Government, to use steam towing boats, either individually or in any partnership or corporate capacity, for towing on the Nile; that there is no monopoly of traffic established, the country boats (on the old system) being still permitted to ply without restriction. That the general interests of commerce are promoted by the company, which also has expended large sums in English machinery and plant, and employs a large body of English artizans on its works."

With reference to the second point, I can only refer to the second and third paragraphs of my report of the 13th October, 1856, and to the observations of Mr. Green in No. 25 from folio 31 to the end.

The company has expended large sums in improving the navigation, has greatly checked adulteration and frauds, and facilitated traffic; it has engaged to provide a sufficient supply of water in the Canal (often hitherto stopped for want of water for several months in each year). For these advantages it charges increased tolls, as canal and river navigation companies do in other countries. The company, moreover, has recently reduced its tariff. It may be further stated that your Lordship will be at all times ready to consider attentively any complaint as to the undue increase of these tolls, or as to their being so unreasonably onerous as to be practically injurious to commerce, but that your Lordship is not at present disposed to view them in this light.

I would further take leave to suggest that, inasmuch as the old system of traffic by country boats remains open and unrestricted, I do not see how the Steam Towing Company can properly be considered as a "monopoly."

The Viceroy does not exercise or grant a monopoly of carrying goods by water on the Nile; this trade is still free. He only grants an exclusive right of using steam tugs (a "novel invention" in Egypt). The grant has more analogy to a patent than to a monopoly.

I may perhaps further suggest (in conclusion) that the amount or rate of tolls is

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quite a distinct question from the exclusive right of towing. The amount of tolls *per se* may possibly be onerous, but there is *quid pro quo* given by the company. The true question would appear to be: "What is the difference in point of time, loss and damage by adulteration and delay, and actual cost of carriage and tolls, upon (say) a ton of goods carried each way under the old (boat and old toll) system, and under the new?" Moreover, the country boats derive (as I understand) much benefit from the company's improvements in the navigation and still compete to some extent with the company. Mr. Green's observations appear to me conclusive upon these points. The commercial interests of the public are, according to him (on the whole), greatly advanced and promoted by the company. Messrs. Barker do not appear to contest this. The new tolls may of course be too high, and may require reduction, but this is not Messrs. Barker's gravamen; they, having failed to obtain a concession themselves, now want to compete with the company as steam towers on their own account, or to destroy its exclusive right by introducing (without the permission of the Egyptian Government, and contrary to its contention and its invariable practice hitherto), as a matter of international right, and by the interference and support of Her Majesty's Government, a free or unrestricted system of steam towing by all Europeans indiscriminately, at all events by all British subjects. This, I am of opinion, cannot be properly insisted on by Her Majesty's Government; the reduction of the tolls may remain open as a question of minor importance; but if this alone were taken up and obtained, it would not satisfy Messrs. Barker.

I may also remark that a company which has rendered such important services to commerce, and which is bound to expend so much money in the substantial and permanent improvement of the great channel of commercial traffic in Egypt, is in my opinion rather deserving of support than of opposition at the hands of Her Majesty's Government; and that the Egyptian Government has in this instance apparently acted in perfect good faith throughout, and has used its sovereign prerogative in a reasonable and beneficial manner. It has not only secured the establishment of a greatly improved communication, but it has so managed matters as to make this improvement conducive to the permanent benefit not merely of Egypt, but of commercial interests generally.

I have, &c.

J. D. HARDING.

No. 7.

Queen's Advocate to the Earl of Clarendon.

My Lord, *Doctors' Commons, October* 3, 1857.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd September ultimo, stating that, with reference to my report of the 8th ultimo, respecting the alleged monopoly granted by the Pasha of Egypt to the Steam Towing Company on the Nile and Mahmoudieh Canal, he was directed to transmit to me the draft of the answer which it is proposed to address to Mr. Butt with reference to the complaint made by Messrs. Barker and Fowler on that subject; and to request that I would inform your Lordship if that draft is right and proper.

Mr. Hammond was also pleased to annex for reference some of the former papers respecting this case.

In obedience to your Lordship's commands. I have the honour to

Report—

That the observations contained in my report of the 8th September last were intended rather (as suggested by Mr. Hammond's letter of the 15th August last) by way of answer to the memorial of Messrs. Barker and Co. dated Alexandria the 23rd May, 1857, than to the letter of Mr. Butt dated the 11th July, 1857.

I have introduced (by way of suggestion) some alterations in the draft, subject to which I am of opinion that it is right and proper.

I have, &c.

J. D. HARDING.

No. 8.

The Law Officers of the Crown to Earl Russell.

My Lord, *Lincoln's Inn, June* 14, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's consul at Alexandria (No. 14, 9th May), enclosing a copy of a memorial addressed to him by the chairman of the British mercantile community at Alexandria, respecting the proposed formation of an international company for the purpose of facilitating the transport of produce and merchandise by means of steamers, lighters, tug-boats, &c., in the harbours of Egypt, as well as on the Nile and all navigable canals.

Mr. Hammond was also pleased to state that the parties concerned in this enterprise are desirous of ascertaining whether the right of navigating the rivers and canals of the Ottoman Empire is not secured to the British flag under the most-favoured-nation clause, and the several stipulations with foreign Powers referred to in the memorial; and that the question as to the right of foreigners to navigate the Nile and the Mahmoudieh Canal under their own flag formed the subject of correspondence in 1856–7, and was reported on by Her Majesty's Advocate-General on the 8th September of the latter year.

Mr. Hammond was also pleased to state that he enclosed the correspondence, and was directed by your Lordship to request that we would favour your Lordship with our opinion with regard to the question now raised by the British mercantile community at Alexandria.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to

Report—

That we are of opinion that the right of navigating the rivers and canals of the Ottoman Empire under the British flag is not secured to Her Majesty's subjects under the most-favoured-nation clause in the treaties referred to in the letter of Mr. Taylor. As we agree with the elaborate and careful report of the late Queen's Advocate on this point, dated the 13th October, 1856 (contained in the volume transmitted to us from the Foreign Office), we do not think it necessary to state more in detail the premises which have led us to this conclusion.

We have, &c.

ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 9.

The Law Officers of the Crown and Dr. Deane to Earl Granville.

My Lord, *Temple, December* 14, 1872.

WE are honoured with your Lordship's commands signified in Lord Tenterden's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Ambassador at Constantinople relative to a question which had arisen as to the right of British subjects to participate in the coasting trade of the Ottoman Empire.

That he (Lord Tenterden) inclosed a memorandum, with its enclosures, which had been prepared at the Foreign Office, bearing on that subject; and he was to request us to take the papers into consideration, and favour your Lordship with our opinion as to the instructions which should be addressed to Her Majesty's Ambassador in the matter.

That we would perceive that the three principal points to be considered were the

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right to the coasting trade as regarded goods; secondly, as regarded passengers; and the question of the limits to be assigned to the port of Constantinople.

In obedience to your Lordship's commands we have the honour to

Report—

That, in our opinion, Her Majesty's Ambassador at Constantinople may be instructed to insist upon the right of British ships to the coasting trade within the Ottoman dominions as regards both goods and passengers.

This right being derived from article 1 of the treaty of 1861, and the treaties between Belgium and Turkey, 1838, article 11, and between Greece and Turkey, 1855, article 10, and indirectly from article 19 of the treaty of 1861.

There is not, in our opinion, anything unreasonable in the contention of the Ottoman Government that the Bosphorus constitutes the Port of Constantinople.

That the navigation within the limits of that port should be subject to the restrictions imposed by the Ottoman Government is not inconsistent with any treaty stipulations, and Her Majesty's Ambassador may be instructed to concede that point if insisted upon.

We have, &c.
J. D. COLERIDGE.
G. JESSEL.
J. PARKER DEANE.

No. 10.

Foreign Office to the Law Officers of the Crown and Dr. Deane.

Gentlemen, *Foreign Office, September* 17, 1881.

I HAVE the honour to transmit to you, by direction of Earl Granville, the papers noted in the accompanying list, respecting the navigation of the Rivers Tigris and Euphrates by British vessels.

The first question which arises has reference to a claim put forward by the Euphrates and Tigris Steam Navigation Company to tow barges on those rivers as a matter of right, a proceeding which has from time to time met with opposition on the part of the local authorities at Bagdad.

The second question is of a more general character, and has reference to the right of foreign vessels to navigate those rivers alleged to have been conceded in 1846, in pursuance of an arrangement entered into between Sir S. Canning and the Porte, which resulted in a vizierial letter addressed to the Pasha of Bagdad instructing him to carry out the same.

Document 1 transmitted herewith contains a full exposition of the question and a résumé of the correspondence on the subject.

Document 2 contains a memorandum on the question by Mr. Plowden, Her Majesty's consul-general at Bagdad.

Document 3 contains a copy of a despatch from Lord Granville to Mr. Goschen, No. 44 of the 16th May, 1881, instructing his Excellency to remind the Porte of the arrangement entered into in 1846 with Sir S. Canning, and copies of a correspondence between Mr. Plowden and the Governor-General of Bagdad.

Document No. 4 contains copies of the firmans and vizierial letters referred to in the other enclosures.

Among the papers transmitted herewith you will find (Nos. 6 and 7) Mr. St. John's despatch No. 44 of the 29th December, 1880, and the letter of the company to the Foreign Office of the 20th May, 1880, referred to in Lord Granville's despatch to Mr. Goschen (Enclosure 3, p. 1), and (No. 5) a recent despatch from Her Majesty's Ambassador at Constantinople (No. 68 of the 25th July last), in which Lord Dufferin holds out some hope that these questions may be satisfactorily adjusted. A copy of the Capitulations and of the British treaty of 1861, referred to in Mr. Plowden's memorandum (document No. 2), is likewise transmitted herewith.

I am to request that you will take these papers into your consideration and favour Lord Granville with your opinion, firstly, as to how far the general right to navigate the Euphrates and Tigris can be claimed for British vessels under the arrangement of

1846; secondly, whether the right claimed by the Euphrates and Tigris Steam Navigation Company to tow barges on those rivers can properly be maintained.

I have, &c.
CHARLES W. DILKE.

List of Papers.

1.	Memorandum by Sir E. Hertslet		March	27, 1881
2.	Consul-General Plowden	(No. 2)	March	28, „
3.	To Mr. Goschen	(No. 144)	May	16, „
	Consul-General Plowden	(Nos. 3 and 4).		
4.	Firman of 1834, and Vizierial letters.			
5.	Lord Dufferin	(No. 68)	July	25, 1881.
6.	Mr. St. John	(No. 44)	December	29, 1880.
7.	Letter of the Company		May	20, „
8.	British treaty with Turkey of 1861, and Capitulations (Hertslet's "Treaties relative to Trade" (Turkey), pp. 8 and 41).			

Report.

The evidence of the arrangement made by Sir Stratford Canning in 1846, and of the nature of the rights which it confers consists almost exclusively of his despatch of the 18th March, 1846, in which he informs Her Majesty's Government that the arrangement has been arrived at. The only document under the hand of any representative of the Turkish Government on which reliance can be placed as affording against them evidence of the arrangement, is, so far as we are aware, the dispatch of Raouf Pacha to the Governor of Bagdad on the 2nd April, 1846. That despatch appears to be chiefly concerned with the question of tariffs and of the duties to be levied on foreign as compared with Turkish vessels. It is not an announcement of an arrangement conceding to British vessels the right to navigate the Rivers Tigris and Euphrates under their own flag, though it certainly by inference seems to recognise the fact that vessels under the English flag have been navigating, and will continue to navigate, those rivers for the purpose of internal commerce. And if, subsequent to that despatch, British commercial steamers, in continuance of prior usage, had navigated the rivers with no warrant beyond what is contained in it, and without objection by the Turkish authorities, these facts, coupled with the despatch of Raouf Pacha, would afford cogent evidence against the Turkish authorities that an arrangement rendering this course legitimate had been entered into.

It appears, however, that no British steamer was placed upon either the Tigris or Euphrates prior to the year 1862 except the two vessels which had been navigating them before 1846 under the authority of the firman of the 29th December, 1834.

It is necessary, therefore, carefully to examine the circumstances which intervene between the date of the arrangement in question and the year 1862.

It appears that in 1859 Messrs. Lynch and Co. having, in view of establishing a line of steamers on the Tigris and Euphrates, entered into communication with Sir H. Bulwer, at that time Her Majesty's Ambassador at Constantinople. Sir H. Bulwer (whether from having overlooked the agreement of 1846 or from some other cause does not appear) expressed the view that Messrs. Lynch could not, without further authority from the Turkish Government, claim the right permanently to navigate the river with steamers carrying the British flag. But the Ottoman Minister for Foreign Affairs informed Sir H. Bulwer, in answer to his enquiries, that if Messrs. Lynch were to apply to the Porte for a firman of concession to establish a line of steamers to run between Bagdad and Bussorah, the Porte would, he thought, not be averse to an arrangement of that nature. Upon this Messrs. Lynch submitted to Sir H. Bulwer an application for a firman "granting them the requisite sanction to navigate the rivers of the country with British registered steam-vessels." No answer was received to this application until 1861. In January of that year Sir H. Bulwer transmitted a vizierial letter to the Pasha of Bagdad. The terms of that document are important. It begins by reciting that the British Embassy had made communications for the purpose of obtaining a renewal of the orders sent concerning "the British steamers and boats authorised by His Majesty to ply on the Rivers Tigris and Euphrates," it then recites the firman of 1834 and the report of 1846 with reference to the duties to be levied on British vessels and the despatch of Raouf Pasha of the 2nd April, 1846, founded upon it, and it concludes by instructing the pasha "to act according to these rules." It is to be observed that this

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despatch treats as in full force the firman of 1834 authorising the British Government to station two steamers on the River Euphrates at Bagdad, and to run them by turns for the purpose of facilitating trade, and that the part of the despatch which is more general in its terms and has reference to the vizierial letter of 1846 deals with the financial question only.

This seems hardly consistent with the idea that the arrangement announced by Sir Stratford Canning was treated as being then in force and having the effect to be gathered from his despatch. For that arrangement which permitted British merchant steamers without limit of number to ply on the rivers would override the extremely limited authority given by the firman of 1834. And the various applications made by Sir H. Bulwer to the Porte, resulting in his receiving from them the vizierial instructions of January 1861, were wholly unnecessary if such an arrangement as was communicated to Her Majesty's Government in 1846 was still in force.

In 1862 Messrs. Lynch and Co. placed their first steamer on the rivers. Their second followed in the year 1864, and as early as that date the Turkish authorities distinctly asserted that under existing firmans only two British steamers were permitted to navigate the Tigris. From that time to the present the Government of Turkey has persistently adhered to that position. The use of more than two steamers has during all this period been only exceptional, and has never been permitted without remonstrance and the assertion that it could not be claimed as a right. These remonstrances appear to have been acquiesced in from time to time, and notably in the memorandum of the English Embassy (if it be correctly quoted by Aali Pasha) in 1864. And the British Ambassador has on various occasions sought permission for acts the title to do which would have been clear under the reported arrangement of 1846.

Considering therefore the unsatisfactory nature of the evidence of that arrangement so far as Turkish documents are concerned, and that the authority alleged to have been given appears not to have been acted upon, that for nearly twenty years the Turkish Government have practically denied its existence, and that Her Majesty's representatives at the Porte, so far from insisting that it existed and relying upon it, have sought permission which would have been needless if it were in force, we think the general right to navigate the Tigris and Euphrates cannot now be claimed by British vessels under the arrangement of 1846.

As regards the second question submitted to us, we think the company are entitled to employ steamers having authority to ply upon the Rivers Tigris and Euphrates for all commercial purposes for which such vessels are ordinarily employed, and we think this would probably include the towing of barges laden with merchandise.

But we would observe that if the only authority for British steamers to run on these rivers is derived from the firman of 1834, as appears to have been insisted upon on the one hand and acquiesced in on the other, it may be expedient to remember in pressing the matter upon the Turkish Government that the firman of 1834 is, as was pointed out by Sir H. Bulwer, a permission open to revocation by the Turkish Government.

We have, &c.
HENRY JAMES.
FARRER HERSCHELL.

November 18, 1881.

I agree with the Attorney- and Solicitor-General in the answer to the first question. With respect to the second question, I regret to differ.

I think the permission given to a limited number of steamers to navigate the rivers does not include the leave to tow barges laden with merchandise.

At the time of the firman in 1834 towing was not, I consider, in the view of the Turkish Government. No extension of the leave given in the firman has since been conceded.

The towing of barges would obviously to a very great extent add to the carrying power of the steamers, and such use of the steamers, in my opinion, is not within the intention, and certainly not within the letter, of the permission given by the Turkish Government.

I am therefore of opinion that the right claimed by the Euphrates and Tigris Steam Navigation Company to tow barges on those rivers cannot properly be maintained.

I have, &c.
PARKER DEANE.

No. 11.

Foreign Office to the Law Officers of the Crown and Dr. Deane.

Gentlemen, *Foreign Office, February* 19, 1884.

I HAVE the honour to transmit to you, by direction of the Secretary of State, the papers noted in the accompanying list, and relating to a grave difficulty which has arisen between Her Majesty's Government and the Sublime Porte touching the right lately claimed by the Turkish Government to stop the traffic of the Tigris and Euphrates Steam Navigation Company.

The vessels of that company have plied for upwards of twenty years on those rivers, carrying the Indian mails and interchanging traffic with the steamers of the British India Company, whereby Bagdad has been brought into direct communication with all parts of India and Europe.

The origin of the establishment of the company is as follows:

From the records in this Office it appears that since 1834 the Euphrates was navigated for many years by two steamers, belonging to the East India Company, and afterwards to the Government of India, under a firman of the Porte of the 29th December, 1834, and a vizierial letter of the 13th September, 1842* (copies, Appendix, Nos. 1 and 2).

It is stated by the Porte that this privilege was accorded by two firmans, the first granted in 1834, and the other in 1841† (copies, Appendix, Nos. 3 and 4).

These two steamers were used for the purposes of Colonel Chesney's exploring expedition, which broke up in 1837, and afterwards for commercial purposes, under the command of Captain H. B. Lynch, but always as Government steamers (E, p. 1).

From a much earlier date a trade has been carried on in the Tigris by British subjects in native vessels carrying the British flag, and paying no dues (K).

In 1845 disputes arose as to the payment of dues by those vessels, and Nejib Pasha, then Vali of Bagdad, questioned the right of British subjects to navigate the rivers at all under the British flag.

The matter was reported by Major Rawlinson, Her Majesty's consul at Bagdad, to Sir Stratford Canning, Her Majesty's Ambassador at Constantinople, who thought it expedient that occasion should be taken of this incident to regulate the whole question of the navigation of those rivers by means of a direct understanding with the Porte.

He accordingly entered into negotiations with the Grand Vizier, the result of which was reported in his despatches No. 45 of the 18th March and No. 53 of the 4th April, 1846 (Appendix, No. 5).

In those despatches Sir Stratford Canning states that an "agreement" had been arrived at as to the right of British vessels to navigate those rivers, and as to the amount of dues payable by British subjects carrying on the "internal trade" on the rivers; and he records the agreement in the following terms:—

"The substance of the agreement is this: British vessels, qualified to navigate as such, will be allowed to pass up and down the rivers without obstruction under their own flag, paying for the merchandise on board according to the Treaty of Balta Liman, and staying to carry on the internal traffic at their pleasure. British-owned boats or vessels built in the country and employed in the internal trade will pay duty on the same terms, but will not be allowed to bear the national colours. Those vessels which pass up the rivers beyond the port of entry will pay an anchorage duty of 5 Turkish piastres on each vessel, a charge considerably less than half the amount levied under that denomination on British vessels here."

He transmits copies of his correspondence with Major Rawlinson, in which he distinctly explains that while native boats owned by British subjects must no longer carry the British flag, a practice which was illegal by British law, British vessels entitled to carry the British flag will be allowed to navigate the rivers under their

* According to Mr. Redhouse, this date should be 1841. (See Appendix, No. 8.)

† This firman was unknown to Her Majesty's Government until the receipt of the Turkish Ambassador's note.

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national colours, whether engaged in the internal trade only or in the foreign trade, subject to the payment of the dues applicable to such trades respectively, and that no distinction would be made between sailing-vessels and steamers. Sir Stratford in his despatch to Major Rawlinson of the 4th April, 1846, transmitted to him a copy of a letter from the Grand Vizier to Nejib Pasha, the Vali of Bagdad, informing him of the agreement, and instructing him to carry it out. I am to invite your particular attention to the terms of that letter (which you will find in Appendix, No. 6), because it is contended by the Porte that it applies solely to native boats belonging to British subjects and carrying on the internal trade on the rivers under the British flag, and has no reference to sea-going British vessels.

Previously to 1862 no British steamers appear to have navigated the rivers except the Government steamers authorised on the Euphrates by the firmans of 1834 and the vizierial letter of 1842 (Appendix Nos. 1 and 2); and nothing appears to have occurred in relation to the agreement of 1846 until 1859, when Messrs. Lynch and Co., being desirous of establishing a line of steamers on the Tigris and Enphrates, applied to Sir H. Bulwer, then Her Majesty's Ambassador at Constantinople, for information as to their right to do so.

Sir H. Bulwer, who had apparently overlooked Sir Stratford Canning's agreement of 1846, expressed the opinion that Messrs. Lynch and Co. could not, without further authority from the Porte, claim the right to put steamers on the river under the British flag. But the Turkish Minister for Foreign Affairs having intimated that the Porte would not be adverse to grant to Messrs. Lynch and Co. a firman for that purpose, the latter submitted to Sir H. Bulwer an application for that privilege.

In the meanwhile, Messrs. Lynch and Co., of London, addressed a letter to the Foreign Office dated the 9th February, 1860, stating that they had an order from their house abroad to purchase a steamer to trade between Mohammerah, Bussorah, and Bagdad, and enquiring whether an English company had a right to navigate those foreign waters.

The reply to that enquiry was as follows :—

Foreign Office, February 17, 1860.

"Gentlemen,

"I am directed by Lord John Russell to acknowledge the receipt of your letter of the 9th February, enquiring whether an English company has a right to navigate the waters between Mohammerah, Bussorah, and Bagdad, and I am to acquaint you, in reply, that in the year 1846 it was agreed with the Porte that British vessels, qualified to navigate as such, should be allowed to pass up and down the Rivers Tigris and Euphrates under their own flag, paying for the merchandise on board according to the Treaty of Balta Liman, and staying to carry on the internal traffic at their pleasure, that British-owned boats or vessels built in the country and employed in the internal trade should pay duty on the same terms, but should not be allowed to carry the national colours, and that an anchorage duty of 5 Turkish piastres should be paid on each vessel which passed up those rivers beyond the port of entry.

"Lord John Russell has no further information as to how the case stands with regard to the Persian port of Mohammerah.

"I am, &c.
(Signed) "E. HAMMOND.

"To Messrs. Stephen Lynch and Co.,
"London."

On the other hand, Sir H. Bulwer, at Constantinople, who still remained under the impression that special authority was necessary to enable Messrs. Lynch and Co. to put their steamer on the river, applied to the Porte for such authority, and obtained in January 1861 a vizierial letter to be addressed to the Vali of Bagdad. A copy of that letter will be found in Appendix, No. 7.

The letter commences by stating that the British Embassy had applied for "a renewal of the orders concerning the British steamers and boats authorised to ply on the Rivers Tigris and Euphrates." It then recites the two firmans, also the arrangement of 1846, and the instructions sent to the vali in pursuance thereof, and directs him to act according to the above rules.

It is important to bear in mind that this vizierial letter was the first official document issued on the subject of the navigation of the Euphrates and Tigris since the agreement of 1846, and that it was issued for the express purpose of the establishment of the company on those rivers.

Owing to resistance on the part of the vali, a further order, similar in effect, was sent to him in 1862, when Messrs. Lynch and Co. put their first steamer on the river. Their second steamer was put on in 1864. The Porte, however, from that date to the present time have insisted that the right of those steamers to navigate the rivers is derived solely from the firman of 1834, and they deny that any such right was conferred by the vizierial letters of 1846 and 1861.

Notwithstanding the Foreign Office letter of the 17th February, 1860, above cited, Messrs. Lynch and Co. appear to have acquiesced in that view, and certainly the action of Her Majesty's Embassy at Constantinople has been quite inconsistent with the right of general navigation claimed under Sir Stratford Canning's agreement of 1846.

It seems a matter of surprise that Messrs. Lynch and Co. should not have brought the Foreign Office letter of the 17th February, 1860, to the notice of Her Majesty's Ambassador; but it has been suggested (B, p. 3) that they were possibly not averse to the limitation of two steamers imposed by the firman of 1834, as securing to them a virtual monopoly.

Indeed, as lately as the 25th February, 1875, they addressed a letter to the Foreign Office, in which they stated that the company was formed on the faith of a firman under which it was authorised to employ two steam-vessels on the Euphrates and Tigris, and that all they then asked was to withdraw one of those steamers which was old, and to substitute for it a new and efficient one.

The attention of the British Embassy was first drawn to the agreement of 1846 in despatch No. 158 of the 30th September, 1874, to Sir H. Elliot. But his Excellency in his reply (No. 247 of the 20th October, 1874) deprecated agitating the question, and observed that if Her Majesty's Government relied on general international principles as giving a general right of navigation, "the claim would be weakened by a reference to the special permissions in virtue of which the steamers had hitherto plied" (G).

The attention of the British Embassy was again drawn to the agreement of 1846 in a Foreign Office despatch No. 44, Commercial, May 16, 1881, on the occasion of a dispute as to the right of the company's steamers to tow barges; but no action seems to have been taken on that despatch, and it will be seen that as recently as June 1883 (A, p. 14) the embassy, in supporting the claims of the company, have invoked the firman, and not the agreement of 1846.

Since the establishment of the company constant disputes have arisen with the local authorities as to the substitution of new steamers for old ones, the right of towing barges, and other matters; but the right of the two steamers of the company to ply on the rivers was never contested until now.

In his despatch No. 193 of the 11th July, 1883 (A, p. 35), Mr. Wyndham, Her Majesty's chargé d'affaires at Constantinople, observes that after the correspondence of 1873 and 1874 (G) it will be difficult to induce the Ottoman Government to allow Messrs. Lynch and Co. to run a greater number of vessels than they have done hitherto, taking also into consideration that all the endeavours of Her Majesty's Embassy to obtain permission for them to tow barges have hitherto been in vain.

On this part of the case I am to refer you to Sir E. Hertslet's two memoranda (C) and (D), and to the report of the Law Officers of the Crown in 1881 (F).

The navigation of the Tigris and Euphrates by the two steamers of the company has thus continued uninterruptedly for upwards of twenty-two years, during which period a great amount of capital has been expended in depôts and establishments, and great benefits have been thereby conferred on the commerce of the country. (Memorandum by Sir L. Pelly, K, paragraphs 8–10.)

In July last intelligence was received of the forcible stoppage of the traffic of the company by the local authorities, whose arbitrary and discourteous action in this matter will be found described at pp. 26 and following of the Correspondence (A).

The injurious effect of the stoppage of the company's steamers, to British trade generally, is shown in the letters of Mr. Lynch (pp. 72, 94, and 119), of the British India Steam Navigation Company (p. 18), of Messrs. Gray, Dawes, and Co., (pp. 27, 71, and 108), of Messrs. Glover Brothers (p. 29), of Messrs. Steel, Young, and Co. (p. 29), of the London Chamber of Commerce (p. 95), and of Mr. Cooke (p. 62), who states that the tonnage visiting the port of Bussorah, which, in 1871, was only 7,110 tons, increased, in 1882, to no less than 74,760 tons. The immediate object which the Turkish Government had in view in stopping the traffic of the Company is the desire to secure the exclusive profits of the navigation for an Ottoman company (A, pp. 37 and 120—Nos. 79 and 161). But there is reason to believe that political

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objects are also connected with their recent action (A, p. 102, p. 64; E, p. 5; and H, p. 4).

Earl Granville immediately on receipt of the intelligence that the traffic of the company had been stopped by the Turkish authorities addressed a note to the Turkish Ambassador, dated the 5th July, protesting against this proceeding, and expressing the hope that the *status quo* would be re-established pending the friendly discussion of the question between the two Governments (A, p. 21).

In a further note, dated the 11th July, his Lordship reserved all rights against the Porte for the consequences of their action (A, p. 26).

These remonstrances led to an arrangement which is recorded in Lord Granville's despatch to Mr. Wyndham No. 131 of the 4th August, 1883 (A, p. 79), under which the company was allowed to resume its traffic, without prejudice, and pending the friendly discussion of the question between the two Governments.

In pursuance of that arrangement several interviews have taken place between the Turkish Ambassador and the Under-Secretaries of State at the Foreign Office, for the purpose of discussing the question and of arriving, if possible, at some amicable solution of the difficulty (H).

Those interviews, however, having led to no practical result, the Ambassador was invited to address a note to Lord Granville, setting out precisely the grounds on which the Porte defended their action in stopping the traffic of the company.

His Excellency accordingly addressed a note to Lord Granville on the 28th ultimo, to which I am now to invite your attention.

In that note the Ambassador maintains that the sole right of navigation possessed by the company is derived from the firman of 1834 and a firman of 1841, of both of which he transmits copies (Appendix, Nos. 3 and 4).

He denies that a general right to navigate the rivers was ever granted to British vessels, and he proceeds to give his interpretation of the vizierial letters of 1846 and 1861.

He argues that, if those documents were intended to concede a general right of navigation, the reference to the firmans of 1834 and 1841 in the vizierial letter of 1861 would have been superfluous; that it is impossible to hold that such a right could be accorded by simple vizierial letters; that it must necessarily have formed the subject of a treaty, the benefit of which, moreover, would be claimed at once by all the other Powers entitled to most-favoured-nation treatment; that the vizierial letters had no reference to British vessels entitled to carry the British flag, but only to British-owned native craft which improperly carried the British flag and thus escaped the payment of dues; that the object of the vizierial letters was only to record the decision of the Porte that British-owned native craft might continue to navigate the rivers on payment of the same dues as the vessels belonging to Ottoman subjects, and that accordingly they had continued to do so to this day, subject to such payment and without carrying the British flag; that the report of the Hôtel des Monnaies referred to in the vizierial letter of 1846 was only intended to lay down that native craft owned by foreigners engaged in the internal trade must pay the same dues as vessels owned by Ottoman subjects, and engaged in the same internal trade, and not to decide the question whether British vessels had the right to navigate the rivers, such a question not being within the competence of that department; that owing to the vague terms of the vizierial letters there had been confusion on the part of Her Majesty's Government between British vessels entitled to carry the British flag and British-owned native vessels, which caused them to place on those letters an interpretation as erroneous as it was inadmissible, and that the company therefore, in its own interest, would do well to abandon untenable pretensions, and to restrict itself to the privilege conferred by the firmans, which was limited to the navigation of the Euphrates only, by two British steamers.

As regards the argument that the company's line of steamers has been established for more than twenty years on the Tigris, without objection on the part of the Porte, that a large capital has been expended on its establishment, that it is under contract with the British Government for the carriage of the Indian mail, and that the stoppage of its traffic would give rise to grave complaints on the part of the mercantile interest and in Parliament, his Excellency observes that the transport of the Indian mails could be effected by a Turkish steamer; that the friendly tolerance of the Porte could not affect its imprescriptible rights; that the expenditure of the company has been amply repaid by its profits; that its establishment on the Tigris has never ceased to give rise to disputes; that the question is not one affecting the interests of British commerce in general, but of a private company, and that if the

British Parliament and public evinced so much solicitude for a private company, how much more was the Porte bound to safeguard the rights of its subjects in general, and to secure to them the advantages of inland navigation, following therein the example of other civilised States; that, for political and economic reasons, the Porte must insist that the navigation of the Tigris shall be reserved for Ottoman vessels; finally, that although the privilege accorded by Imperial firman to two British steamers to navigate the Euphrates had been granted for so long only as it should be mutually advantageous, and present no inconvenience, yet the Porte, animated by the desire to be agreeable to Her Majesty's Government, would not object to the continuance of the two steamers of the company on the Euphrates.

His Excellency concludes by remarking that it had been pointed out that he had confounded the steamers of the company for the British Government steamers formerly commanded by Captain Lynch; but that such an error did not affect the merits of the question, as the Porte had no official knowledge of the company, and the two steamers of the company had in fact been substituted for the Government steamers in the enjoyment of the privilege granted by the firman; and, indeed, that his Excellency had referred to the company as the Lynch Company, in order not to contest its right to the privilege in question.

The above is a summary of the arguments adduced by the Turkish Ambassador on behalf of the Porte to justify its action in stopping the traffic of the company.

Those arguments give rise to the following questions:—

1. Whether there was in fact snch an agreement in 1846 as is recorded in Sir Stratford Canning's despatch No. 45 of the 18th March of that year.

2. If so, whether Her Majesty's Government are precluded by the course of action followed since that date, as well as by the insufficiency of evidence and the conflict of interpretation, from now claiming the benefit of that agreement.

3. Whether (assuming that agreement to be abandoned) the vizierial letter of January 1861 (Appendix, No. 7), which was issued at the request of the British Ambassador to enable Messrs. Lynch and Co. to establish their steamers on the Euphrates and Tigris, and the fact of the enjoyment by the company of that privilege for twenty-two years without protest, are evidence of an agreement by the Porte to the establishment of the two steamers of the company on those rivers; and, if so, whether, having regard to the capital invested on the faith of that agreement, to the British commercial interests which it has developed, to the private rights which it has created, and to all the surrounding circumstances, Her Majesty's Government are entitled to insist on the maintenance of the *status quo* of the company.

As regards the first question, the account given by Sir Stratford Canning of the agreement of 1846 is perfectly clear and unambiguous; but, unfortunately, there is no evidence of the agreement beyond his despatch No. 45 of the 18th March, 1846, and the two vizierial letters of 1846 and 1861, the interpretation of which is in dispute. Moreover, no British vessels have navigated the rivers in pursuance of that agreement since it was made.

There seems, therefore, insuperable difficulty in establishing the agreement as against the Porte.

As regards the second question, it was answered adversely to the claim of Her Majesty's Government by the Law Officers in 1881 (F).

The third question, therefore, is the one to which Lord Granville desires more particularly to invite your attention.

It is conceived that in answering the note of the Turkish Ambassador it is not necessary to abandon the claim of Her Majesty's Government under the agreement of 1846, and the following considerations are submitted as suggesting materials for a reply:—

1. The firmans, of which copies are transmitted by the Turkish Ambassador, have no reference to the steamers of the Tigris and Euphrates Steam Navigation Company, but only to the two British Government steamers, which were authorised by those firmans to ply on the Euphrates, and which had ceased to navigate that river long before the company was established.

2. The company was created in 1862, for the purpose of establishing a line of steamers between Mohammerah, Bussorah, and Bagdad, and in order to prevent any opposition on the part of the local authorities, the British Ambassador applied to the Porte for a renewal of the orders given to the Vali of Bagdad in a vizierial letter dated the 2nd April, 1846.

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3. That letter had been addressed to the vali in 1846 in execution of an agreement arrived at between Sir Stratford Canning and the Porte, by way of settlement of a dispute concerning the navigation of the rivers by British vessels and the payment of dues in the internal trade.

Sir Stratford Canning, in his despatches of that date (of which copies are transmitted), reports that the dispute had been settled as follows: That whereas British-owned native boats had for forty years carried on the internal trade on the rivers under the British flag and without payment of dues, they should in future pay the same dues as the native-owned boats engaged in the same trade. On the other hand, that British vessels entitled to carry the British flag would be entitled to navigate the rivers under their national colours, either for the purposes of the foreign trade or of the internal trade, subject to the payment of the local dues or treaty customs duties applicable to such trades respectively, and as regards British vessels passing up the rivers beyond the customary port of entry (Bussorah), subject to the payment of an anchorage due of 5 piastres only.

4. In accordance with the request of the British Ambassador in 1861, and in view of the establishment of the steamers of the company on the rivers, the Grand Vizier addressed a letter to the Vali of Bagdad, dated the 15th January, 1861, renewing the orders given in the vizierial letter of 1846.

The same orders were renewed again in 1862, when the company put their first steamer on the Tigris, and opened their line between Bagdad and Bussorah, and that line has been in active operation ever since.

The interpretation which the Turkish Ambassador asks Her Majesty's Government to place on the two vizierial letters of 1846 and 1861 appears inconsistent with the express terms of those documents.

The Grand Vizier, in the letter of the 2nd April, 1846, after distinctly stating that the British Ambassador had claimed the right of British vessels to trade in both rivers on payment of the dues "*established by treaty*," cites the report of the Hôtel des Monnaies, to which the British Embassy had given its adhesion, and which had been submitted to and approved by the Sultan.

That report declares what are the proper dues payable by vessels engaged in the internal trade, "*under whatever flag they may sail*," and those payable by British vessels entering the rivers, or issuing therefrom, for the purposes of the external trade and it prescribes the amount of anchorage toll for the latter. The Grand Vizier then proceeds to declare that His Imperial Majesty had approved the report, and had ordered that it should be put into execution; and he accordingly directs the vali to levy on British-owned vessels engaged in the internal traffic the same dues as on native vessels, and to levy on the cargoes of British vessels "qui viennent du dehors et qui vont à l'étranger," the established customs duties, and an anchorage toll of 5 piastres.

The vizierial letter of the 15th January, 1861, is still more explicit on the point.

The Grand Vizier commences by stating that the British Ambassador had requested "a renewal of the orders which were sent *concerning the British steamers and boats authorised by His Majesty to ply on the Rivers Tigris and Euphrates;*" and after referring to the privileges formerly granted by Imperial firmans in 1834 and 1841, he proceeds to set out the vizierial instructions issued in 1846 at the request of the British Embassy. He cites the distinction therein laid down between the internal trade and the trade carried on "by British vessels, whether coming loaded from abroad and entering one of those two rivers with their cargoes, or issuing therefrom to the sea laden with Ottoman produce, and bound for foreign countries," which (he states) are liable only to the treaty tariff and to the mooring toll "on entering or leaving the Tigris or Euphrates, like all other foreign ships coming to other ports of the Ottoman Empire;" and he renews the order that those rules should be carried out.

5. The above passages would be inexplicable were the Porte's interpretation of the vizierial letters to be accepted. On the other hand, they are entirely consistent with the agreement of 1846, above mentioned, and recorded to Sir Stratford Canning's despatches of that year.

6. With respect to the argument of the Turkish Ambassador that such an agreement could not be concluded otherwise than by a treaty, it is to be observed that if such an agreement was made it is not the less valid as an international agreement because the Porte did not think fit to give effect to it by an Imperial firman, or to insist on making it the subject of a formal treaty.

7. But even if it be conceded that the contracting parties were not *ad idem* in respect of the agreement, and that there was no intention on the part of the Porte to grant to British shipping in general the right of navigating the rivers, it is contended that the vizierial letter of 1861 having been issued for the very purpose of enabling the company to put their two steamers on the Tigris and Euphrates, was intended to confer, and did confer, that privilege on them.

The company have enjoyed that privilege ever since, with the knowledge and acquiescence of the Porte.

It is true that, as stated by the Turkish Ambassador, disputes have arisen as to the substitution of new steamers for old ones, the towing of barges, and other matters; but the right of navigation of the two steamers of the company has never before been contested, which shows that the attitude of the Porte during the last twenty-two years has not been one of "friendly tolerance," as suggested by His Excellency, but one of acquiescence in a claim of right. On the faith of that acquiescence the company have invested a large capital in depôts at convenient points on both rivers, and in establishments for working the mail, passenger, and cargo services, and they have developed a large trade, to the great benefit of the country.

8. Her Majesty's Government are not called upon, therefore, to invoke, in the present case, the general right of navigation claimed by them on the Rivers Tigris and Euphrates.

Whatever may be the true construction of the agreement of 1846 as to the general right of navigation, Her Majesty's Government consider that the attitude of the Porte during the last twenty-two years debars them from now disputing the validity of the rights claimed and exercised by the company under the vizierial letter of 1861, and that they are entitled to insist on the *status quo* of the company being maintained.

It is in that sense that during the discussion of the case with the Turkish Ambassador it was pointed out to his Excellency that if Her Majesty's Government were to waive their claim to the right of general navigation, the rights hitherto enjoyed by the company on the rivers must be respected and maintained.

9. The abrupt and arbitrary action of the Porte in forcibly stopping the traffic of the company without notice, and for no other cause than the desire to secure their business and profits for an Ottoman company, is marked by a singular lack of friendliness and courtesy towards Her Majesty's Government, and presents an incident unparalleled in the history of the commercial relations of this country inany part of the world.

10. It is hardly necessary to add that, whatever solicitude may be evinced by Parliament and by the public in the case, it will not have for its object the pecuniary advantages of a private company, but the maintenance of the just rights of a British company, legitimately acquired by agreement between the British Government and the Porte, and confirmed by long usage and acquiescence.

I am to request that you will take this letter into consideration, together with the papers transmitted herewith, and that you will favour Lord Granville with your opinion as to whether the note of the Turkish Ambassador may properly be answered in the sense of the observations above submitted thereon; and, if not, that you will advise his Lordship as to the rights of Her Majesty's Government in the matter, and as to the substance of the reply which should be returned to the Turkish note.

I have, &c.

JULIAN PAUNCEFOTE.

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List of Papers.

[See p. 24.]

APPENDIX.

[See p. 24.]

No. 12.

Foreign Office to the Law Officers of the Crown and Dr. Deane.

Gentlemen, *Foreign Office, March 25, 1884.*

I HAVE the honour to transmit to you by direction of the Secretary of State, the papers noted in the accompanying list, relating to the question of the navigation of the Tigris and Euphrates, which was submitted to you in my letter of the 19th ultimo.

The first portion of the enclosed papers relates to the rumoured desire, on the part of the Ottoman authorities at Bagdad, to settle the matters in dispute by buying up the existing Tigris and Euphrates Navigation Company, and I am to ask whether, in your opinion, any communication should be addressed to the Porte on the question of this rumoured action of their authorities at Bagdad.

The second portion of the papers now sent relates to the claims of the company to compensation for the losses they may have suffered through the action of the Porte; and I am to ask for an expression of your opinion on the action, if any, which Her Majesty's Government should take in regard to these claims.

The particulars respecting the company's claims will be found at p. 119 of the printed correspondence which was enclosed in my above-mentioned letter of the 19th ultimo.

I am to request that you will take the papers transmittted herewith into your consideration, and that you will, at your early convenience, favour Lord Granville with your opinion on the questions submitted in this letter, and in my previous letter of the 19th ultimo.

I have, &c.
JULIAN PAUNCEFOTE.

List of Papers.

[See p. 24.]

No. 13.

The Law Officers of the Crown and Dr. Deane to Earl Granville.

My Lord, *Royal Courts of Justice, April 9, 1884.*

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th February last relating to the difficulty which had arisen between Her Majesty's Government and the Sublime Porte touching the right claimed by the Turkish Government to stop the traffic of the Tigris and Euphrates Steam Navigation Company.

We have also the honour to acknowledge the receipt of a further letter from Sir J. Pauncefote, dated the 25th ultimo, stating that he had the honour to transmit to us papers relating to the navigation of the Tigris and Euphrates with reference to those then before us.

That the first portion of the enclosed papers related to the rumoured desire on the part of the Ottoman authorities at Bagdad to settle the matter in dispute by buying up the existing Tigris and Euphrates Navigation Company, and that Sir Julian Pauncefote was to ask whether, in our opinion, any communication should be addressed to the Porte on the question of that rumoured action of their authorities at Bagdad.

That the second portion of the papers related to the claims of the company to compensation for the losses they may have suffered through the action of the Porte, and that Sir Julian Pauncefote was to ask for an expression of our opinion on the action, if any, which Her Majesty's Government should take in regard to these claims.

That the particulars respecting the company's claims would be found at p. 119 of the printed correspondence which was enclosed in Sir Julian Pauncefote's letter of the 19th February.

That your Lordship desired to be favoured with our opinion on the questions submitted in Sir Julian Pauncefote's letters.

In obedience to your Lordship's commands we have the honour to

Report—

That we think the note of the Turkish Ambassador may properly be answered in the sense of the observations submitted thereon.

We may add that, in the light of the fuller information now before us with reference to the extent to which navigation on the Tigris existed prior to 1846 and otherwise we think the vizierial letter of 1846 affords more evidence in support of Lord Stratford de Redcliffe's statement of the arrangement arrived at than it appeared to us to do when we made our former report.

The position of the British Government seems therefore to be somewhat stronger than we then thought, though the difficulties arising from the action of the embassy at Constantinople subsequent to 1846 still remain.

With regard to the further questions submitted in Sir Julian Pauncefote's letter of the 25th March, it hardly seems necessary to make any communication at present to the Porte, as sanction only has as yet been given to the formation of an Ottoman company on condition that it does not infringe upon the rights of Messrs. Lynch's Company.

We submit that it would probably be expedient to postpone any action for the purpose of enforcing the claim of the company until an understanding has been arrived at upon the main question.

Claims 2 and 3 appear right in principle if the company were entitled to run the barges, which, however, as appears from our former report, is not altogether free from doubt.

The amount strikes us as somewhat exaggerated.

We are not sufficiently informed of the facts to express an opinion whether the first claim is one that can be supported.

We have, &c.
HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

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List of Papers sent February 19, 1884.

(A.) Print of Correspondence respecting the Navigation of the Tigris.
(B.) Memorandum (Mr. Kennedy), July 20, 1883, Confidential No. 4838.
(C.) Memorandum (Sir E. Hertslet), March 27, 1881, Confidential No. 4439
(D.) Memorandum (Sir E. Hertslet), July 28, 1881, Confidential No. 4835.
(E.) Memorandum (Mr. Plowden), July 31, 1883, Confidential No. 4838, p. 17
(F.) Law Officers, November 18, 1881, Confidential No. 4637, p. 98.
(G.) Correspondence 1873–74, MS. vol.
(H.) Memorandum (Lord E. Fitzmaurice), August 18, 1883.
(I.) Musurus Pasha. December 28, 1883.
(J.) Memorandum (Sir E. Hertslet), February 8, 1881, Confidential No. 4802.
(K.) Memorandum (Sir L. Pelly). Confidential No. 4838, pp. 15 and 16.

APPENDIX.

No.
1. Firman, December 29, 1834.
2. Vizierial letter, September 13, 1842.
3. Firman, December 17 (27), 1834.
4. Firman, September 8 (17), 1841.
5. Despatches from Sir S. Canning: No. 45, March 18, 1846; No. 53, April 4, 1846.
6. Vizierial letter, April 2, 1846.
7. Vizierial letter, January 15, 1861.
8. Note by Mr. Redhouse, Oriental Translator, January 15, 1884.

List of Papers enclosed in Sir Julian Pauncefote's Letter of March 25, 1884.

Lord Dufferin, No. 53, Commercial, March 15, 1884; ditto, No. 57, Commercial, March 17, 1884.
Tigris and Euphrates Navigation Company, March 20, 1884; ditto, March 5, 1884.
To Tigris and Euphrates Navigation Company, March 10, 1884.

No. 14.

The Law Officers of the Crown and Dr. Deane to Earl Granville.

My Lord, *Royal Courts of Justice, May* 28, 1884.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 19th instant, stating that he was to transmit to us the papers, together with a copy of our report of the 9th ultimo, on the case of the Tigris and Euphrates Steam Navigation Company and the general question of the right of British vessels to navigate the Tigris and Euphrates.

That in that report we stated that, in our opinion, the note of the Turkish Ambassador of the 28th January last might properly be answered in the sense of the observations thereon which were submitted in Sir Julian Pauncefote's letter to us of the 19th February.

That a draft reply to the Turkish note had accordingly been prepared, and that he was to request that we would take the same into our consideration, together with the other papers transmitted, and that we would be good enough to inform your Lordship whether the draft met with our approval or required any amendment.

In obedience to your Lordship's commands we have the honour to

Report—

That the draft meets with our approval.

The only amendment we would suggest is that made by us in the last paragraph but two. As worded at present it might be taken as expressing a willingness to waive absolutely for the future any right to the claim of general navigation if the rights hitherto enjoyed by the company are respected and maintained.

We do not gather that this is the intention of the Government.

We have, &c.
HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

List of Papers

For List of Papers marked (A) to (K), and Appendices 1 to 8, see Nos. 11 and 12.
(L.) Draft to Law Officers, February 19, 1884.
(M.) Law Officers, April 9, 1884.
(N.) Draft to Musurus Pasha.

Annex to No. 14.

Earl Granville to Musurus Pasha

M. l'Ambassadeur, *Foreign Office, June* 6, 1884.

HER Majesty's Government have given their most careful attention to your Excellency's note of the 28th December last respecting the forcible stoppage of the traffic of the Tigris and Euphrates Steam Navigation Company by the local authorities at Bagdad, and the general question of the right of British vessels to navigate the Tigris and the Euphrates. I now have the honour to communicate to your Excellency the replies of Her Majesty's Government to the various arguments adduced in that note.

Your Excellency denies that a general right to navigate the Rivers Tigris and Euphrates was ever conceded by the Porte to British vessels, and with regard to the Vizirial letters of 1846 and 1861, you argue that if those documents had been intended to concede a general right of navigation, the reference to the Firmans of 1834 and 1841 in the Vizirial letter of 1861 would have been superfluous; that it is impossible to hold that such a right could be accorded by simple Vizirial letters; that it must necessarily have formed the subject of a treaty, the benefit of which, moreover, would be claimed at once by all the other Powers entitled to most-favoured-nation treatment. That the Vizirial letters had no reference to British vessels entitled to carry the British flag, but only to British-owned native craft which improperly carried the British flag, and thus escaped the payment of dues. That the object of the Vizirial letters was only to record the decision of the Porte, that British-owned native craft might continue to navigate the rivers on payment of the same dues as the vessels belonging to Ottoman subjects, and that accordingly they had continued to do so to this day, subject to such payment and without carrying the British flag. That the report of the "Hôtel des Monnaies" referred to in the Vizirial letter of 1846 was only intended to lay down that native craft owned by foreigners engaged in the internal trade must pay the same dues as vessels owned by Ottoman subjects, and engaged in the same internal trade, and not to decide the question whether British vessels had the right to navigate the rivers, such a question not being within the competence of that department. That owing to the vague terms of the Vizirial letters there had been confusion on the part of Her Majesty's Government between British vessels entitled to carry the British flag and British-owned native vessels, which caused them to place on those letters an interpretation as erroneous as it was inadmissible. Your Excellency added that the Tigris and Euphrates Steam Navigation Company would do well, therefore, to abandon untenable pretensions and to restrict itself to the privilege conferred by the Firmans, which was limited to the navigation of the Euphrates only, by two British steamers. That right of navigation you maintain is derived solely from the Firmans of 1834 and 1841.

Her Majesty's Government are unable, however, to agree to this statement of the facts of the case, or to the interpretation thus sought to be placed on the documents relating to it.

In the first place, I would observe that the above-mentioned Firmans have no reference to the steamers of the Tigris and Euphrates Steam Navigation Company, but only to the two British Government steamers, which were authorised by those Firmans to ply on the Euphrates, and which had ceased to navigate that river long before the company was established.

The company was created in 1862, for the purpose of establishing a line of steamers between Mohammerah, Bussorah, and Bagdad, and in order to prevent any opposition on the part of the local authorities, the British Ambassador applied to the Porte for a renewal of the orders given to the Vali of Bagdad in a Vizirial letter, dated the 2nd April, 1846.

That letter had been addressed to the vali in 1846 in execution of an agreement arrived at between Sir Stratford Canning and the Porte, by way of settlement of a dispute concerning the navigation of the rivers by British vessels and the payment of dues in the internal trade.

Sir Stratford Canning, in his despatches of that date, reports that the dispute had been settled as follows: That whereas British-owned native boats had for forty years carried on the internal trade on the rivers under the British flag and without payment of dues, they should in future pay the same dues as the native-owned boats engaged in the same trade. On the other hand, that British vessels entitled to carry the

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British flag would be entitled to navigate the rivers under their national colours, either for the purposes of the foreign trade or of the internal trade, subject to the payment of the local dues or treaty customs duties applicable to such trades respectively, and as regards British vessels passing up the rivers beyond the customary port of entry (Bussorah), subject to the payment of an anchorage due of 5 piastres only.

The corresponding record of the agreement will no doubt be found in the archives of the Sublime Porte.

In February 1860 Messrs. Lynch and Co., being desirous of establishing a line of steamers on the rivers, applied to the Foreign Office for information as to the right of navigation, aud they were informed in reply of the arrangement concluded by Sir Stratford Canning.

In 1861, with a view to the carrying out of their project, the Grand Vizier, at the request of the British Ambassador, addressed a letter to the Vali of Bagdad, dated the 15th January, 1861, renewing the orders given in the Vizirial letter of 1846.

The same orders were renewed again in 1862, when the company formed by Messrs. Lynch put their first steamer on the Tigris, and opened their line between Bagdad and Bussorah, and that line has been in active operation ever since.

Your Excellency, with a view to vindicating the recent action of the Porte, endeavours to show that the two Vizirial letters of 1846 and 1861 have a totally different meaning from that which Her Majesty's Government attach to them. But the interpretation which your Excellency asks Her Majesty's Government to place on those letters appears inconsistent with the express terms of the documents.

The Grand Vizier, in the letter of the 2nd April, 1846, after distinctly stating that the British Ambassador had claimed the right of British vessels to trade in both rivers on payment of the dues "*established by treaty*," cites the report of the "Hôtel des Monnaies," to which the British Embassy had given its adhesion, and which had been submitted to and approved by the Sultan.

That report declares what are the proper dues payable by vessels engaged in the internal trade, "*under whatever flag they may sail*," and those payable by British vessels entering the rivers, or issuing therefrom, for the purposes of the external trade, and it prescribes the amount of anchorage toll for the latter. The Grand Vizier then proceeds to declare that His Imperial Majesty had approved the report, and had ordered that it should be put into execution; and he accordingly directs the vali to levy on British-owned vessels engaged in the internal traffic the same dues as on native vessels, and to levy on the cargoes of British vessels "qui viennent du dehors et qui vont à l'étranger," the established customs duties, and an anchorage toll of 5 piastres.

The Vizirial letter of the 15th January, 1861, is still more explicit on the point.

The Grand Vizier commences by stating that the British Ambassador had requested "a renewal of the orders which were sent *concerning the British steamers and boats authorised by His Majesty to ply on the Rivers Tigris and Euphrates;*" and after referring to the privileges formerly granted by Imperial Firmans in 1834 aud 1841, he proceeds to set out the Vizirial instructions issued in 1846 at the request of the British Embassy. He cites the distinction therein laid down between the internal trade and the trade carried on "by British vessels, whether coming loaded from abroad and entering one of those two rivers with their cargoes, or issuing therefrom to the sea laden with Ottoman produce, and bound for foreign countries," which (he states) are liable only to the treaty tariff and to the mooring toll "on entering or leaving the Tigris or Euphrates, like all other foreign ships coming to other ports of the Ottoman Empire;" and he renews the order that those rules should be carried out.

The above passages would be inexplicable were your Excellency's interpretation of the Vizirial letters to be accepted. On the other hand. they are entirely consistent with the agreement of 1846 above mentioned, and recorded in Sir Stratford Canning's despatches of that year.

With respect to your Excellency's argument, that such an agreement could not be concluded otherwise than by a treaty, it is to be observed that if such an agreement was made it is not the less valid as an international agreement because the Porte did not think fit to give effect to it by an Imperial Firman or to insist on making it the subject of a formal treaty.

But even if it be conceded that the contracting parties were not *ad idem* in respect of the agreement, and that there was no intention on the part of the Porte to grant to British shipping in general the right of navigating the rivers, Her Majesty's Government contend that the Vizirial letter of 1861, having been issued for the very purpose of enabling the company to put their two steamers on the Tigris and Euphrates, was intended to confer, and did confer, that privilege on them.

The company have enjoyed that privilege ever since, with the knowledge and acquiescence of the Porte.

It is true that, as stated by your Excellency, disputes have arisen as to the substitution of new steamers for old ones, the towing of barges, and other matters; but the right of navigation of the two steamers of the company has never before been contested. This shows that the attitude of the Porte during the last twenty-two years has not been one of "friendly tolerance," as suggested by your Excellency, but one of acquiescence in a claim of right. On the faith of that acquiescence the company have invested a large capital in depôts at convenient points on both rivers, and in establishments for working the mail, passenger, and cargo services, and they have developed a large trade, to the great benefit of the country.

Her Majesty's Government are not neces-arily called upon, therefore, to invoke, in the present case, the general right of navigation claimed by them on the Rivers Tigris and Euphrates.

Whatever may be the true construction of the agreement of 1846 as to the general right of navigation, Her Majesty's Government consider that the attitude of the Porte during the last twenty-two years debars them from now disputing the validity of the rights claimed and exercised by the company under the Vizirial letter of 1861, and that they are entitled to insist on the *status quo* of the company being maintained.

It is in that sense that during the discussion of the case it was pointed out to your Excellency that if Her Majesty's Government were to waive [at the present time, insisting upon] their claim to the right of general navigation, the rights hitherto enjoyed by the company on the rivers must be respected and maintained.

Words in brackets inserted to meet the objection of Law Officers to the original draft

Your Excellency remarks that the question is not one affecting the interests of British commerce in general, but of a private company, and that if the British Parliament and public should evince so much solicitude for a private company, how much more is the Porte bound to safeguard the rights of its subjects in general, and to secure to them the advantages of inland navigation, following therein the example of other civilised States. On this point, it is hardly necessary for me to state that whatever solicitude may be evinced by Parliament and by the public in the case, it will not have for its object the pecuniary advantages of a private company, but the maintenance of the just rights of a British company, legitimately acquired by agreement between the British Government and the Porte, and confirmed by long usage and acquiescence.

I have only to observe in conclusion, M. l'Ambassadeur, that the abrupt and arbitrary action of the Porte in forcibly stopping the traffic of the company without notice, and for no other cause than the desire to secure their business and profits for an Ottoman company, is marked by a singular lack of friendliness and courtesy towards Her Majesty's Government, and presents an incident unparalleled in the history of the commercial relations of this country in any part of the world.

I have, &c.

No. 15.

The Law Officers of the Crown and Dr. Deane to Earl Granville.

My Lord, *Royal Courts of Justice, December* 23, 1884.

WE are honoured with your Lordship's commands signified in Sir Julian Pauncefote's letter of the 28th ultimo, stating that he was to transmit to us the papers relating to the right of British vessels to participate to carry passengers in the Gulf of Smyrna.

That British vessels had long engaged in that traffic when an attempt was made by the Ottoman authorities to stop it by force, but, on representations being made to the Porte by Her Majesty's Ambassador at Constantinople, the Governor-General of Aidin was instructed to permit the British vessels to run as usual, and the Ottoman Government expressed their regret that the incident should have arisen. (Lord Dufferin's despatch No. 76 of the 6th April.)

But that it appeared from the note of the 30th June last from the Ottoman Ambassador at this Court that the Porte had given those orders provisionally only, so that it might explain to Her Majesty's Government the grounds on which it claimed for the Imperial Government the right to prohibit the British steamers from engaging

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in the passenger traffic in the port and Gulf of Smyrna, and to grant a monopoly thereot to an Ottoman company.

That his Excellency Musurus Pasha was then informed generally that Her Majesty's Government could not concur in the arguments he had put forward (see draft of the 3rd October, 1884). That his Excellency then called at the Foreign Office and expressed a wish that a more detailed reply might be given to his note, and that the draft (A) had been prepared, and that Sir J. Pauncefote was to request our opinion as to whether we concurred in its terms.

That the information in regard to right generally of British subjects to engage in the coasting trade of the Ottoman Empire, and in regard to the case of the British vessels which at one time carried passengers in the Bosphorus, we were referred to Sir E. Hertslet's memorandum of the 28th November, 1872, at the end of which would be found extracts from the treaties bearing on that question, and his further memorandum of the 16th July, 1883, and the legal opinions thereto annexed.

That Sir Julian Pauncefote was to request that we would take the papers transmitted into our consideration, and that we would favour your Lordship with our opinion on the questions submitted in that letter, and with any general observations we might have to offer on the case.

In obedience to your Lordship's commands we have the honour to report—

That we concur in the terms of the draft marked (A). We have, however, to suggest the substitution of the words "by treaty" for the words "by the 41st article of the Capitulations." If the right rested only on the terms of that article it would be open to much controversy.

We have, &c.
HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

List of Papers.

To Colonel Rose (Constantinople), No. 12, January 17, 1853.
To Sir H. Elliot, No. 80, Commercial, December 23, 1872.
Memorandum by Sir E. Hertslet, November 28, 1872; appended to which will be found the extracts from the treaties between Turkey and foreign Powers bearing on the question. Confidential No. 2575.
Mr. Goschen, No. 27, Commercial, April 18, 1881.
To Mr. Goschen, No. 38, Commercial, April 28, 1881.
Lord Dufferin, No. 65, Commercial, July 17, 1881.
To Lord Dufferin, No. 72, Commercial, July 28, 1881.
Mr. Wyndham, No. 17, Commercial, January 27, 1883.
To Mr. Wyndham, Nos. 22 and 52, Commercial, February 10 and March 6, 1883.
Consul Dennis, Nos. 4 and 7, Commercial, June 1 and 9, 1883.
Mr. Wyndham, No. 158, Commercial, June 22, 1883.
To Mr. Wyndham, No. 96, Commercial, June 29, 1883.
Mr. Wyndham, Nos. 156, 167, and 174, Commercial, June 20, 29, and 30, 1883.
Memorandum by Sir E. Hertslet, July 16, 1883: Confidential No. 4793; appended to which will be found the Reports from the Law Officers on the subject of the Ottoman coasting trade.
To Mr. Wyndham, No. 122 A, Commercial, July 31, 1883.
Mr. Wyndham, Nos. 226, 227, 247, and 264, Commercial, July 25 and 26, August 10 and 22, 1883.
To Mr. Wyndham, No. 154, Commercial, September 4, 1883.
Consul Dennis, No. 10, Commercial, August 31, 1883; ditto, Telegraphic, September 13, 1883.
Mr. Wyndham, Nos. 272, 278, and 281, Commercial, August 30, September 3 and 5, 1882.
To Mr. Wyndham, No. 161, Commercial, September 17, 1883.
To Consul Dennis, No. 1, Commercial, September 19, 1883.
To Mr. Wyndham, No. 165, Commercial, September 19, 1883.
Mr. Wyndham, Nos. 304, 309, and 312, Commercial, September 20 and 22, 1883.
To Lord Dufferin, Nos. 176 and 177, Commercial, October 2, 1883.
Consul Dennis, No. 11, Commercial, October 4, 1883.
Lord Dufferin, No. 329, Commercial, October 17, 1883.
Memorandum by Sir E. Hertslet, October 28, 1883.
To Lord Dufferin, Nos. 204 and 205, Commercial, November 21, 1883.
To Consul Dennis, No. 2, Commercial, November 21, 1883.
Lord Dufferin, No. 357, Commercial, December 13, 1883.
To Lord Dufferin, No. 231, Commercial, December 24, 1883.
Lord Dufferin (Telegraphic), March 2, 1884.
To Lord Dufferin, No. 27, Commercial, March 3, 1884; ditto (Telegraphic), March 4, 1884; ditto, Nos. 36, 37, 38, and 39, Commercial, February 25, March 1 and 4, 1884.
Consul Dennis (Telegraphic), March 11, 1884.
Lord Dufferin, No. 46, Commercial, March 7, 1884; ditto (Telegraphic), March 12, 1884.
To Lord Dufferin, No. 30, March 12, 1884.
Lord Dufferin, Nos. 41, 42, and 50, Commercial, March 2, 4, and 11, 1884.
Consul Dennis (Telegraphic), March 17, 1884
To Lord Dufferin, Nos. 33 and 34, Commercial, March 18, 1884.

Consul Dennis, No. 13, March 11, 1884.
Lord Dufferin, No. 58, Commercial, March 18, 1884; ditto (Telegraphic), March 25, 1884; ditto, No. 51, Commercial, March 12, 1884.
To Lord Dufferin, No. 37, Commercial, March 27, 1884
Lord Dufferin, No. 62, Commercial, March 24, 1884.
To Lord Dufferin, No. 41, Commercial, April 1, 1884.
Lord Dufferin, Nos. 63, 68, and 71, Commercial, March 25 and 31, 1884.
To Lord Dufferin, No. 49, Commercial, April 16, 1884.
Lord Dufferin, Nos. 76 and 78, Commercial, April 6 and 10, 1884.
To Lord Dufferin, Nos. 52 and 53, Commercial, April 28, 1884.
To Musurus Pasha, April 29, 1884.
Lord Dufferin, No. 111, Commercial, June 7, 1884.
Musurus Pasha, June 30, 1884; with a memorandum thereon by Sir E. Hertslet, respecting the case of the British steamers which at one time carried passengers on the Bosphorus.
To Musurus Pasha, July 5, October 3 and 21.

Annex to No. 15.

Draft of Letter (A) from Earl Granville to Musurus Pasha.

(A.)
M. l'Ambassadeur, *Foreign Office*, , 1884.

FROM the conversations which took place between your Excellency and Lord E. Fitzmaurice on the 14th and 15th instant, and the explanations which your Excellency then gave of the contents of your note of the 30th June last in regard to the passenger traffic in the port and Gulf of Smyrna, I gathered that the Sublime Porte lays special stress on the view which is urged in that part of the above-mentioned note in which your Excellency says:—

"I consider myself under no present obligation to discuss either the question of the coasting trade, or that of the right of Great Britain to most-favoured-nation treatment, or the right to which any foreign Power might be entitled, by basing itself upon that right, to claim for its subjects the benefit of the articles of the treaties of commerce made by Belgium and Holland with the Sublime Porte in regard to the coasting trade, which treaties covenanted expressly for reciprocity.

"I confine myself to putting on record that the concession accorded by Imperial Firman to the Smyrna Steam Navigation Company is founded on a right inherent in the Sovereign Power of every independent State, and of which no treaty and no State Paper interdicts the exercise by the Sublime Porte or subordinates to consultation with any foreign Power . . . . It is in virtue of this right, and within its limits, that the Sublime Porte has conceded by Imperial Firman to a native company a monopoly of the passenger traffic in the port and Gulf of Smyrna."

In conversation your Excellency urged that a right to grant monopolies similar to that now contended for by the Sublime Porte, in the passage I have just quoted, was claimed and exercised by Her Majesty's Government, and you instanced the case of private Acts of Parliament, which, you argued, gave monopolies to companies to perform the traffic between particular places. I desire at once to point out to your Excellency that such a view of the private legislation of Parliament is not one which would be accepted in this country.

Monopolies have long since been abolished in England, and are alien to the spirit of our laws.

When an Act of Parliament gives the right to a company to perform a particular service, it does not grant a monopoly to that company, neither would Parliament be estopped from granting to another company the right to perform an analogous service as soon as it could be shown that such a concession would be to the public advantage.

But even were Parliament to grant a monopoly, it would certainly not be one which would conflict with the treaty rights of foreigners.

The contention of your Excellency, therefore, that the Porte are only claiming for His Imperial Majesty the Sultan a right to grant monopolies which is exercised in this country by Parliament cannot be supported.

Her Majesty's Government have never denied the right inherent in the Sovereign Power of every independent State, as regards the grant of monopolies, to which your Excellency appeals, provided such grant did not invalidate any treaty right; and this brings me to the important statements in your Excellency's note, that the right claimed by the Porte to grant the monopoly in question is not affected by treaty or other obligation towards foreign Powers; and, further, that the right contended for was admitted by Her Majesty's Government in 1853 in the case of the Chirket-i-

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Khaïrie Company, to which exclusive power was granted to carry passengers in the Bosphorus.

On those two points I regret to say, M. l'Ambassadeur, that we are entirely at issue.

Her Majesty's Government have invariably maintained that the right to carry passengers between Turkish ports was secured to British vessels *by the 41st article of the Capitulations.** That right has been confirmed by long enjoyment, and indeed the Porte has not only acquiesced in it, but on the occasion of the correspondence relating to the passenger traffic in the Bosphorus, to which your Excellency refers, the Porte expressly admitted that "British vessels had a right to carry passengers from one Turkish port to another in the Danube, the Sea of Marmora, and the Dardanelles, but not in the Bosphorus, on the ground that the Bosphorus, including Constantinople and all the Straits of the Black Sea, was one port; and that therefore these Bosphorus boats being like 'caïques,' omnibuses, and hackney coaches, ought to be under the control of the police."

Her Majesty's Government did not admit the arguments, but, owing to the particular circumstances of the locality in question, they offered no further opposition, providing no injury was inflicted on British subjects, and on certain other conditions which were clearly laid down at the time, and which had reference to the true meaning and extent of the "Bosphorus passenger traffic," and to the application of the same prohibition to all foreign vessels of whatever nationality.

The case of the Bosphorus, or port of Constantinople, has therefore no analogy to that of the Gulf of Smyrna, and any attempt to interfere with the passenger traffic of British vessels between Turkish ports or places in that gulf or along the Ottoman coasts would, in the opinion of Her Majesty's Government, constitute a violation of the rights of this country and of the other Powers, founded on the Capitulations, on prescription, and on the express provisions of certain treaties of the Porte with Greece and Belgium to which your Excellency refers in your note of the 30th June, and of which the benefit is claimed by Great Britain under its right to most-favoured-nation treatment.

In the course of our conversation your Excelleney alluded to the fact that it was not unusual for one country, in concluding a treaty of commerce and navigation with another country, to insert a clause expressly reserving its coasting trade; but your Excellency is well aware that, where no such reservation has been made, it has been held that the coasting trade was open, or, in other words, was included in whatever privileges of navigation may have been conceded by such treaty; and no such reservation has ever been made in the treaties concluded between this country and the Porte.

As regards the effect of those treaties, I can only express my entire concurrence in the views which are set forth with great clearness in Lord Dufferin's note to his Excellency Aarifi Pasha of the 8th December, 1883.

With respect to the general question of monopolies, there can be no doubt that they are opposed to the spirit of the commercial engagements of Turkey towards foreign Powers.

By the laws of the Ottoman Empire the State reserves to itself, as is well known, a monopoly in regard to the manufacture of salt, powder. and tobacco, and also in regard to the sale of stamps, and such monopolies do not infringe any treaty rights. But no mention is made of other monopolies, and this is the first time that an attempt has been made by the Porte to increase its revenue by the sale of monopolies intended to deprive foreigners in Turkey of the right to continue a trade in which they have invested a large capital, and which they have carried on for many years by usage and acquiescence, and, as I have shown, by right of treaty.

The proposed monopoly of the passenger traffic in the Gulf of Smyrna to a Turkish company is an innovation which strikes at the root of the commercial relations established *ab antiquo* between Turkey and the Powers of Europe, who are all equally interested in the question; and Her Majesty's Government are not prepared to waive the right they claim for British vessels to participate in the passenger traffic between Turkish ports until such claim shall have been shown to be unfounded, and is abandoned by all the other Powers concerned.

I have, &c.

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* The Law Officers suggested the substitution of the words "by Treaty" for those printed in italics (see No. 15).

No. 16.

The Law Officers of the Crown and Dr. Deane to Earl Granville.

My Lord, *Royal Courts of Justice, June* 11, 1885.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 9th February, stating that he was to transmit to us papers* relating to the right of British vessels to participate in the coasting trade of the Ottoman Empire, and more particularly to carry passengers in the Gulf of Smyrna.

That on the receipt of our report of the 23rd December the draft note to the Ottoman Ambassador was amended in accordance with our suggestions and sent off. That your Lordship had now received his Excellency's reply, under date of the 4th February.

That it appeared to your Lordship that that note was, in the main, a reproduction of arguments already used.

* *List of Papers.*

To Colonel Rose (Constantinople), No. 12, January 17, 1853.
To Sir H Elliot, No. 80, Commercial, December 23, 1872.
Memorandum by Sir E. Hertslet, November 28, 1872; appended to which will be found the extracts from the Treaties between Turkey and foreign Powers bearing on the question. Confidential No. 2575.
Mr. Goschen, No. 27, Commercial, April 18, 1881.
To Mr. Goschen, No. 38, Commercial, April 28, 1881.
Lord Dufferin, No. 65, Commercial, July 17. 1881.
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Mr. Wyndham, No. 17, Commercial, January 27, 1883.
To Mr. Wyndham, Nos. 22 and 52, Commercial, February 10 and March 6, 1883.
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Mr. Wyndham, No. 158, Commercial, June 22, 1883.
To Mr. Wyndham, No. 96, Commercial, June 29, 1883.
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Mr. Wyndham, Nos. 272, 278, and 281, Commercial, August 30, September 3 and 5, 1883.
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To Mr. Wyndam, No. 165, Commercial, September 19, 1883.
Mr. Wyndham, Nos. 304, 309, and 312, Commercial, September 20 and 22, 1883.
To Lord Dufferin, Nos. 176 and 177, Commercial, October 2, 1883.
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Memorandum by Sir E. Hertslet, October 28, 1883.
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Lord Dufferin, No. 357, Commercial, December 13, 1883.
To Lord Dufferin, No. 231, Commercial, December 24, 1883.
Lord Dufferin (Telegraphic), March 2, 1884.
To Lord Dufferin, No. 27, Commercial, March 3, 1884; ditto (Telegraphic), March 4, 1884; ditto, Nos. 36, 37, 38, and 39, Commercial, February 25, March 1 and 4, 1884.
Consul Dennis (Telegraphic), March 11, 1884.
Lord Dufferin, No. 46, Commercial, March 7, 1884; ditto (Telegraphic), March 12, 1884.
To Lord Dufferin, No. 30, March 12, 1884.
Lord Dufferin, Nos. 41, 42, and 50, Commercial, March 2, 4, and 11, 1884.
Consul Dennis (Telegraphic), March 17, 1884.
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Lord Dufferin, Nos. 63, 68, and 71, Commercial, March 25 and 31, 1884.
To Lord Dufferin, No. 49, Commercial, April 16, 1884.
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To Lord Dufferin, Nos. 52 and 53, Commercial, April 28, 1884.
To Musurus Pasha, April 29, 1884.
Lord Dufferin, No. 111, Commercial, June 7, 1884.
Musurus Pasha, June 30, 1884; with a memorandum thereon by Sir E. Hertslet respecting the case of the British steamers which at one time carried passengers on the Bosphorus.
To Musurus Pasha, July 5, October 3 and 21, 1884.
Law Officers, December 23, 1884. Confidential No. 5121, p. 132.
Musurus Pasha, February 4, 1885.

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That your Lordship, moreover, failed to see the distinction sought to be established between lines of passenger steamers established in France or Austria, and those established in Turkey, as regarded the right to carry passengers from one Ottoman port to another, nor could your Lordship see the distinction between a "privilège exclusif" and a monopoly.

That Sir J. Pauncefote was to request our opinion as to whether the reply of the Turkish Ambassador called for any further remarks in support of the position taken up by your Lordship in the note to Musurus Pasha of the 30th December last, and to which it was a reply.

In obedience to your Lordship's commands we have the honour to

Report—

That no substantially new point appears to be raised by the reply of M. Musurus, but it may be well to deal with his several arguments in the order in which they are urged.

1. We are unable to appreciate the distinction suggested between the "privilège exclusif," which it is proposed to give to the Ottoman company, and a monopoly.

2. Although the admission of the Ottoman Government made at the time of the discussion relating to the Chirket-i-Khaïrie was not embodied in a treaty, its importance as an admission of the rights of British subjects is not thereby diminished.

The admission was made as the result of a diplomatic controversy in reference to British rights, and was not founded upon any principle limited to a particular locality.

3. Whether the Gulf of Smyrna constitutes a single port like the port of Constantinople is of course a question of fact. As far as we can judge from the map, this does not appear to be so, and the fact that the only important place on the gulf is the town of Smyrna at the bottom of it, and that there is no other town upon it of sufficient importance to be considered a port of commerce, does not, we think, tend to show that the entire gulf forms part of the port of Smyrna.

4. It is admitted that the vessels of the Messageries Maritimes and Austrian Lloyd's carry from one Ottoman port to another, and we do not think that any valid distinction can be drawn between such traffic and the traffic of vessels which ply only between Ottoman ports.

5. It is asserted that this case and that of the "Compagnie du Bosphore Chirket-i-Khaïrie" are identical. It may be well again to point out to the Turkish Government the distinction.

That case supports the contention of Her Majesty's Government, unless it can be established that the Gulf of Smyrna is to be regarded as a single port.

It may deserve investigation whether some part of the voyages performed by Messrs. Joly and Co.'s steamers would not come within the principle conceded in the case of the Bosphorus, even though this may not apply to the whole gulf.

We have, &c.
HENRY JAMES.
FARRER HERSCHELL.
J. PARKER DEANE.

No. 17.

The Law Officers of the Crown and Sir J. Deane to the Marquess of Salisbury.

My Lord, *Royal Courts of Justice, November* 10, 1885.

WE are honoured with your Lordship's commands signified in Sir J. Pauncefote's letter of the 30th ultimo, stating that he was to transmit to us papers relating to the right of British vessels to participate in the coasting trade of the Ottoman Empire, and more particularly to carry passengers in the Gulf of Smyrna.

That in the printed correspondence would be found the last note from the Ottoman Ambassador on the subject, and our particular attention was called to the draft which had been prepared in answer to that note, in accordance with the reports of our predecessors (pp. 69 and 77 of print).

That the point on which your Lordship was especially desirous of obtaining our opinion was as to the soundness of the distinction attempted to be established between the local traffic in passengers between Turkish ports, and carried on entirely in Turkish waters, and that carried on by vessels plying between Turkey and foreign countries.

That the latter was admitted to be within the treaty rights of foreigners, as would be seen by the despatch of Aarifi Pasha to Musurus Pasha of the 8th ultimo (copy enclosed).

But that it was insisted by Assim Pasha, in his note to Mr. Goschen of the 5th April, 1881 (print, p. 4), and also by Musurus Pasha, in his letter of the 4th February last (p. 74), that the former traffic (styled by Assim Pasha "petit cabotage") was not within the treaty rights of any foreign Power, and, as a matter of fact, was never carried on under any foreign flag, except in the case of Messrs. Joly and Co., which gave rise to the present controversy.

For a statement of the treaty rights of this country, and of other countries in matters of navigation, we were referred by Sir J. Pauncefote to Sir Edward Hertslet's memorandum dated the 16th July, 1883, and that our opinion was requested on the question submitted in the letter of Sir J. Pauncefote.

In obedience to your Lordship's commands we have the honour to

Report—

That, in our opinion, no sound distinction can be drawn between the traffic in goods and passengers carried on from one Turkish port to another, by such companies as the Messageries Maritimes and Austrian Lloyd's, by vessels plying between Turkey and foreign countries, and the traffic in goods and passengers carried on by vessels which ply only between Ottoman ports.

We have, &c.
RICHARD E. WEBSTER.
J. E. GORST.
J. PARKER DEANE.

List of Papers.

Colonel Rose, No. 56, February 16, 1853.
Sir H. Elliot, No. 75, November 5, 1872.
Queen's Advocate, January 13, 1853.
Memoranda (Sir E. Hertslet), Confidential Nos. 2575 and 4793.
Printed Correspondence (Confidential No. 5330).
Musurus Pasha, communicated October 8, 1885.
Draft to Musurus Pasha, marked (A).

Annex to No. 17.

Draft of Letter to Musurus Pasha.

(A.) *Foreign Office, November* , 1885.

M. l'Ambassadeur,

I HAVE the honour to inform your Excellency that I have carefully considered the arguments contained in your note of the 4th February last in support of the monopoly granted by the Porte to the Hamidieh Company of the passenger traffic in the Gulf of Smyrna, and I regret to have to state that I am quite unable to view the subject in the same light as your Excellency.

I have also to express my regret at the delay which has occurred in replying to your Excellency's note; but it is principally due to the desire of Her Majesty's Government to obtain reports from British officials in Turkey on certain points.

The question at issue is not a new one. A similar controversy was raised in 1853, and again in 1872, and on various occasions from 1881 to the present time, as to the right of British vessels to engage in the coasting trade of the Ottoman dominions both as regards goods and passengers.

That right, which has been invariably maintained by successive Governments of the Queen, was exercised and enjoyed by British vessels without any objection on the part of the Porte until 1881, when Assim Pasha, in a note to Mr. Goschen of the 5th April of that year, endeavoured to establish a distinction between the coasting trade carried on

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by foreign vessels exclusively between Turkish ports and that carried on by vessels coming from abroad, such as those of the Messageries Maritimes and the Austrian Lloyd's.

In your Excellency's note of the 4th February the same distinction is again insisted on as an argument against the right claimed by Her Majesty's Government for British vessels to enjoy the privilege in question; and with reference to the concession granted to the Hamidieh Company, a distinction is attempted to be drawn between a "privilège exclusif" and a "monopoly."

It is further urged that the present case is identical with that of the "Chirket-i-Khaïrie," which occurred in 1853 with reference to the Bosphorus, and in which your Excellency states that the British claim now contended for was abandoned.

In reply to those arguments, I have the honour to state that, in the opinion of Her Majesty's Government, no valid distinction can be drawn between the traffic in goods and passengers carried on from one Turkish port to another by such companies as the Messageries Maritimes and Austrian Lloyd's and the traffic of vessels which ply only between Ottoman ports, that traffic having been carried on for years by foreign vessels of both classes indifferently, and without objection. Nor can they appreciate the distinction suggested between the "privilège exclusif" and a "monopoly."

As regards the "Chirket-i-Khaïrie" case, I have to observe that far from affording a precedent in favour of the monopoly in question, it supports entirely the contention of Her Majesty's Government, unless it could be established that the Gulf of Smyrna is to be regarded as a single port. But a glance at the map disposes of any such pretension. The Gulf of Smyrna has always been treated as forming part of the coastal waters of Turkey. It has ports with separate custom-houses, and, for the purposes of the coasting trade, no distinction can be admitted between those ports and any other ports of the Turkish dominions open to foreign shipping.

At the time of the discussion of the "Chirket-i-Khaïrie" case, it was declared by the Porte (as pointed out in Earl Granville's note of the 30th December last) that British vessels had a right to carry goods and passengers from one Turkish port to another in the Danube, the Sea of Marmora, and the Dardanelles, but not in the Bosphorus, because the Bosphorus, it was stated, formed part of the port of Constantinople.

It appears to Her Majesty's Government that this declaration and admission by the Porte, having been made as the result of a diplomatic controversy in reference to the British right now claimed, and not having been founded on any principle limited to a particular locality, must be taken as conclusive of the present question. Her Majesty's Government are ready to abide by the principle laid down in that case, and they are prepared to recognise the validity of the concession granted to the Hamidieh Company if confined to the real port of Smyrna, whatever the limits of that port may ultimately be settled to be; but so far as it purports to give to the company a monopoly of the passenger traffic in the Gulf of Smyrna, Her Majesty's Government must continue to protest against the concession and against any attempt to enforce it.

At the same time, they are quite willing to agree to any resonable regulations which may be issued for the proper control of the passenger traffic, and for the removal of the complaints which have been made by the Turkish authorities as to the facilities afforded by foreign vessels engaged in it for the escape of offenders.

I have, &c.

No. 18.

The Law Officers of the Crown to the Marquess of Salisbury.

Royal Courts of Justice, August 5, 1892.

My Lord,

WE were honoured with your Lordship's commands signified in Sir T. Villiers Lister's letter of the 29th June last, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of the British steamer "Euxine."

That the facts of the case were briefly as follows:—

That the Turkish authorities had prevented the British steamer "Euxine" from trading with, and landing and embarking passengers at, Bartin, a small port in the Black Sea, on the ground that it was situated at a distance of 4½ miles from the mouth of the river of the same name, and was consequently not a seaport, but came under the designation of "inland waters."

That it appeared that the "Euxine" had previously been in the habit of trading with Bartin, for the service of which port she was specially built, and was never interfered with till 1889, and that as she drew very little water she was able to reach Bartin, whereas other vessels could not; but that in that year, owing to the recent action of the sea on the river-bed, it had become possible for certain Turkish steamers, of greater draught than the "Euxine," which had been previously unable to do so, to reach that place; and that Sir W. White, Her Majesty's Ambassador at Constantinople, was of opinion that it was on that account that the "Euxine" was excluded from Bartin, although on the occasion in question she was furnished at Constantinople with the usual firman, in which Bartin was named as one of the Turkish ports at which she intended to call.

That Sir W. White protested against the proceedings of the Turkish authorities, and claimed compensation for the loss sustained by the owners of the "Euxine."

That the Porte had, in correspondence on other cases, maintained that Ottoman rivers and internal waters were not open to the ships of foreign nations, and that the Law Officers reported in 1864, with regard to the proposed formation of an International Company for facilitating the navigation of the Nile and of all navigable canals, that the right of navigating the rivers and canals of the Ottoman Empire under the British flag was not secured to British subjects by treaty.

That the Porte had admitted the right of taking part in the "coasting trade" to the subjects of any country which granted a similar right to Ottoman subjects, and would, therefore, presumably allow British vessels to trade at Bartin, were that port situated on the coast. But that the Porte had maintained that, as Bartin was situated 4½ miles up the river, it was not a seaport.

That the most important documents in connection with the case would be found in Sir W. White's despatch No. 67, Commercial, of the 5th July, 1889; Sir W. White's despatch No. 125, Commercial, of the 28th November, 1889; Sir W. White's despatch No. 133, Commercial, of the 2nd November, 1891; Sir C. Ford's despatch No. 26, Commercial, of the 30th March, 1892; and Sir C. Ford's despatch No. 40, Commercial, of the 20th May, 1892.

That it would be perceived from the papers that Her Majesty's Government had always maintained that British subjects had a right to participate in the coasting trade of the Ottoman Empire, so long as other Powers were permitted to do so; and that, in regard to the port of Bartin, numerous British and foreign vessels were long in the habit of running to that port, which, it would be seen from Sir W. White's note to the Porte enclosed in his despatch No. 133, Commercial, of the 2nd November, 1891, was not considered by Her Majesty's Government to be an inland port in any such sense as that ships running to it from the sea were to be considered as engaging in "internal" or river navigation.

That Sir T. Villiers Lister was to request us to take the papers into our consideration, and to favour your Lordship with our opinion on the following questions:—

1. Should Her Majesty's Government press the Ottoman Government for compensation to the owner of the "Euxine" for the interruption of the voyage which his ship made to Bartin in May 1889?

2. Should compensation be demanded for the owner of the "Euxine" for the action of the Ottoman Government in preventing that vessel, after that date, from running to Bartin, for the service of which port she was specially constructed?

That Sir T. V. Lister was, at the same time, to add that your Lordship would be glad to be favoured with any other observations which we might be good enough to offer upon the case generally.

We have taken the matter into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That, in the absence of distinct evidence that Bartin is a seaport and frequented by sea-going vessels of other nations, no good grounds exist upon which Her Majesty's Government can make a claim for compensation to the owner of the "Euxine," either in respect of the interruption of the voyage in May 1889, or for preventing, after that date, the continuance of the voyages of that vessel to Bartin.

We see no justification for the contention that the river at Bartin is excepted from the proposition laid down in the report of the Law Officers of the 14th June, 1864, and the fact that the voyages of the "Euxine" continued without interruption from

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November 1888 to November 1889 cannot prevent the Turkish authorities from at any time asserting the exclusive privilege of their own subjects to the river trade.

We have, &c.

RICHARD E. WEBSTER.
EDWARD CLARKE.

List of Papers.

Sir W. White	(No 67.	Commercial)	July	5, 1889.
Memorandum	..	..	July	17, „
To Sir W. White	(No. 65.	Commercial)	July	22, „
Sir W. White	(No. 125.	Commercial)	November	28, „
Memorandum	..	..	December	9, „
To Sir W. White	(No. 112.	Commercial)	December	18, „
Sir W. White	(No. 72.	Commercial)	April	18, 1890
To ditto	(No. 63.	Commercial)	May	7, „
Mr. Fane	(No. 136.	Commercial)	July	15, „
To ditto	(No. 105.	Commercial)	July	28, „
Messrs. Layton, Steel, and Co.	..	..	September	3, 1891.
To ditto	..	..	September	7, „
To Sir W. White	(No. 82.	Commercial)	September	7, „
Messrs. Layton, Steel, and Co.	..	..	September	8, „
To ditto	..	..	September	10, „
Messrs. Layton, Steel, and Co.	..	..	September	18, „
To Sir W. White	(No. 83.	Commercial)	September	21, „
Messrs. Layton, Steel, and Co.	..	..	October	27, „
To ditto	..	..	October	30, „
Sir W. White	(No. 133.	Commercial)	November	2, „
To ditto	(No. 98.	Commercial)	November	20, „
Sir Clare Ford	(No. 26.	Commercial)	March	30, 1892.
To ditto	(No. 35.	Commercial)	April	19, „
Sir Clare Ford	(No. 40.	Commercial)	May	20, „

No. 19.

The Law Officers of the Crown to the Earl of Rosebery.

My Lord, *Royal Courts of Justice, January* 17, 1893.

WE were honoured with your Lordship's commands signified in Sir Edward Grey's letter of the 5th ultimo, stating that he was directed by your Lordship to transmit to us the papers noted in the accompanying list relative to the case of the British steamer "Euxine."

That the facts of the case would be found briefly stated in the report of the 5th August last from our predecessors in office. That it would be perceived that the cardinal point upon which the ultimate decision in the case must rest was, whether Bartin was a seaport or an inland port.

That there did not appear to be any well-ascertained principles of law, nor were there, so far as was known, judicial decisions or dicta governing the question of what was a seaport, and what was an inland port; nor had any fresh fact or evidence on that point, beyond that contained in Messrs. Robinson and Wilkin's letter of the 30th November, been discovered since the date of the above-mentioned report from our predecessors, with regard to the geographical position of Bartin, which would assist in arriving at an absolutely definite conclusion as to whether that port, in particular, must be classed as a seaport or as an inland port.

That it had, however, been represented to your Lordship, on behalf of the owners of the "Euxine," that to whatever extent the Ottoman authorities might have been justified in strict law and on purely technical grounds in preventing the "Euxine" from running to Bartin, yet that the case was one, not only of considerable practical hardship to the owners, but one in which they were, from an ethical standpoint, at any rate, entitled to considerable sympathy.

That it seemed clear that their vessel was specially designed and built for the purpose of running to Bartin, and that she had for some time been permitted to do so; and that, moreover, she was undoubtedly stopped from so running in order to prevent her from competing with a line of steamers under the Ottoman flag.

That in those circumstances your Lordship had, notwithstanding the opinion already expressed by our predecessors, thought yourself justified in re-submitting the case, and that Sir Edward Grey was, therefore, to request us to take the papers into our consideration, and to be good enough to inform your Lordship whether we concurred

in the opinion expressed by the late Law Officers in their report of the 5th August last; or whether, on the other hand, we considered that there was sufficient evidence to justify Her Majesty's Government in holding that Bartin was a seaport frequented, or capable of being frequented, by the sea-going vessels of other nations; or whether, failing that, any other grounds (and, if so, what) existed upon which Her Majesty's Government could put forward a claim for compensation on behalf of the owners of the "Euxine."

We have taken the papers into our consideration, and, in obedience to your Lordship's commands, have the honour to

Report—

That in our opinion there are reasonable grounds on which Her Majesty's Government may put forward a claim for compensation on behalf of the owners of the "Euxine."

The evidence shows that Bartin is *not* a place whose traffic is confined to inland navigation, but that it is frequented by sea-going vessels which are, at any rate, engaged in the coasting trade.

It would seem that the Turkish Government does not question the right of British vessels to engage in the coasting trade, and, in our opinion, it was in the coasting trade, and not in the navigation of inland waters, that the "Euxine" was engaged.

It may be difficult to establish a claim for compensation on the ground that the "Euxine" was specially fitted for the trade to Bartin, and having regard to the fact that the claim against the Turkish Government has been delayed for diplomatic reasons, we do not think that loss of profit during the time which has elapsed since the vessel was prohibited from trading can be claimed, but the case is one which, in our opinion, entitles Her Majesty's Government to demand substantial compensation.

We desire to point out that, if the Turkish Government can exclude British ships as suggested, such exclusion touches, in an important way, the treaty rights of this country, and the case is no longer one merely affecting the claims of an individual trader to compensation.

We have, &c.

C. RUSSELL.
JOHN RIGBY.

List of Papers.

Sir W. White	(No. 67.	Commercial)	July	5, 1889.
Memorandum	..	..	July	17, „
To Sir W. White	(No. 65.	Commercial)	July	22, „
Sir W. White	(No. 125.	Commercial)	November	28, „
Memorandum	..	..	December	9, „
To Sir W. White	(No. 112.	Commercial)	December	18, „
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Messrs. Layton, Steel, and Co.	..	..	September	8, „
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To Sir W. White	(No. 83.	Commercial)	September	21, „
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To Sir W. White	(No. 98.	Commercial)	November	20, „
Sir Clare Ford	(No. 26.	Commercial)	March	30, 1892.
To Sir Clare Ford	(No. 35.	Commercial)	April	19, „
Sir Clare Ford	(No. 40.	Commercial)	May	20, „
To Sir Clare Ford	(No. 78.	Commercial)	August	13, „
Messrs. Robinson and Wilkins	..	..	November	1, „
Ditto	..	..	November	30, „

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3. His Majesty's Government, in assenting to the annulment of the existing English rights, should state that the Government does so subject to the condition that the new concession is continued for the prescribed time, and that if the concession is withdrawn before the expiration of the prescribed time, or if the new company is dissolved, the English company (which we understand is to continue in existence throughout the period of the concession) will be restored to the rights and privileges which they enjoyed before the annulment.

W. S. ROBSON.
RUFUS D. ISAACS.

Law Officers' Department, April 15, 1910.

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